

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.74 OF 2014
(Govind s/o Laxman Kore and another Vs. Balaji Laxman Kore and others)

Mr.S.S.Manale, Advocate for the petitioners.
Mr.P.P.Dawalkar, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/04/2019

PER COURT :

1. After issuance of Court notice and paper publication of court notice, all the respondents are served. Mr.Dawalkar, learned Advocate has appeared on behalf of respondent No.1.

2. The petitioners are the original plaintiffs in RCS No.624/2004. Their Exhibit 5 temporary injunction application was allowed and injunction was clamped against the defendants directing them not to create third party interest or encumbrances. Since this injunctory order was violated, the petitioners preferred Misc.Appl.No.104/2010 under Order XXXIX Rule 2-A of the CPC. By order dated 07/11/2012, the Trial Court allowed the application and directed attachment of the suit land which was in the possession of defendant No.1 and purchased by Ramesh Madhavrao Patil (Thormote). The

Collector was directed to attach the property.

3. The grievance of the petitioners is that the defendant Balaji moved a Misc.Civil Appeal No.103/2012 under Order XLIII for challenging the order of the Trial Court and the said appeal was allowed by the impugned order dated 12/08/2013 thereby quashing the order of the Trial Court dated 07/11/2012. The ground for setting aside the order was that the order of attachment dated 07/11/2012 would lose its efficacy on 06/11/2013. Further grievance of the petitioners is that when the order of attachment would have been alive till 06/11/2013, the Appellate Court passed the impugned order on 12/08/2013 concluding that the order of attachment stood frustrated on 11/10/2011.

4. Learned Advocate for respondent No.1 has strenuously defended the impugned order contending that such an order of attachment under Order XXXIX Rule 2-A would survive only for 1 year.

5. The Bombay Amendment to Rule 1(r) under Order XLIII, introduced on 01/10/1983, would indicate that an order passed under Order XXXIX Rule 2-A is not an appealable order, in so far as

the State of Maharashtra is concerned. As such, the appeal filed by respondent No.1 before the Appellate Court was not maintainable.

6. In view of the above, this petition is allowed. MCA No.103/2012 stands disposed off as been untenable under Order XLIII Rule 1(r) (Bombay Amendment). Consequentially, the impugned order dated 12/08/2013 would not exist in the eyes of Law being *non-est* and stands set aside.

(Ravindra V.Ghuge, J.)