

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 02831 of 2019
(In Second Appeal No. 0275 of 2009)

District : Jalna

Gangadhar s/o. Dashrath Aagle,
Age 51 years,
Occupation : Barber,
Through Power of Attorney
Bhagwan s/o. Dashrath Aagle,
Age 51 years,
Occupation : Barber,
R/o. Ambad, Taluka Ambad,
Dist. Jalna.

.. Applicant
(Original
plaintiff)

versus

1. Arjun Uttamrao Kanade,
Age 39 years,
Occupation : Business,
R/o. Indira Nagar, Ambad,
Taluka Ambad, Dist. Jalna.
2. Smt. Subhadrabai
w/o. Uttamrao Kanade,
Age 60 years,
Occupation : Household,
R/o. Indira Nagar, Ambad,
Taluka Ambad, Dist. Jalna.

.. Non-applicants
(Original
defendants)

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Mr. Vinesh C. Solshe, Advocate, for the applicant.

*Mr. M.M. Patil (Beedkar), Advocate, for
non-applicants no.01 and 02.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05TH MARCH 2019

ORAL ORDER :

01. Present application has been filed by the original plaintiff, who is the respondent in this Second Appeal No. 0275 of 2009, for restraining the appellants in the second appeal from creating any third party interest or for changing the nature of the suit property. It is stated that in the past also, there was an attempt on the part of the appellants to create third party interest. Now, he has reliably learnt that the appellants are trying to dispose of the property. Both the Courts below are in favour of the present applicant and, therefore, if the property is transferred, he would suffer irreparable loss.

02. By filing affidavit in reply, respondents no.01 and 02 have taken objection. They have denied the fact that they are trying to dispose of the property to one Gopal Raosaheb Gaikwad.

03. Heard both sides. Both the learned Advocates have argued in support of their respective contentions.

04. Regular Civil Suit No. 266 of 2004 was filed by the present applicant for recovery of possession.

It was contested by the present appellants / respondents no.01 and 02. The said suit came to be partly decreed on 12-07-2008 to the extent of house property bearing No. 10-01-16 situated in Ambad. The said decree was challenged by the present applicant - original plaintiff himself in Regular Civil Appeal No. 170 of 2006 before Principal District Judge, Jalna. The said appeal came to be allowed and the suit bearing Regular Civil Suit No. 266 of 2004 came to be decreed *in toto*. Respondents - original defendants have filed the second appeal. It has been admitted. Further, it is to be noted that by Civil Application No.6022 of 2009, initially *ad interim* relief was granted by this Court on 25th June 2009 and then it appears that it is still pending. As on today, the position is that the decree appears to have been stayed as per the said order. But it was only *ad interim* relief and the matter was to stand over to 06-08-2009. The respondent - original plaintiff did not file any reply and thereafter the matter was on board only on 30th October 2012, which was then adjourned in the interest of justice till 13th December 2012. Thereafter, the application was not on board. Now, except the statement by the applicant, that the appellants are intending to create third party interest, there is nothing on record. It was submitted that since it is a private document, the applicant is unable to get copy of the same. But then, the said fact is denied by the non-

applicants and that statement is in the form of affidavit in reply. Therefore, that binds them. Hence, no injunction can be granted as prayed by the applicant.

05. In the light of above, the civil application is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

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