

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.344 OF 2016
WITH
CIVIL APPLICATION NO.445 OF 2016
IN
APPEAL FROM ORDER NO.344 OF 2016**

Narendra Ramkrishna Kulkarni and
Ors.

...Appellants

Versus

Pandurang Masu Khandare and Ors.

...Respondents

.....

Mr. Ajay A. Joshi for the Appellants.

Mr. Vishwanath S. Talkute for the Respondent No.1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th MARCH, 2019.

P.C.:-

With consent, heard finally at the stage of admission.

2. By order dated 4/1/2016, the learned District Judge has passed the following order:-

“1. The temporary injunction application, filed by the appellants, is allowed with costs.

2. The execution of decree of Ld. Jt. C.J.J.D. Pandharpur, dt. 7/7/2015, passed in R.C.S. No.387/2012, is hereby stayed, till the decision of this appeal, i.e. Civil Appeal No.118/2015”

3. The learned counsel for the Appellants states that the Appellants, who are the original plaintiffs in R.C.S No.387 of 2012 shall not execute the decree dated 07/07/2015 till the execution of the Appeal. Said statement is accepted. The challenge is restricted to the first part of the order whereby the learned Judge has granted temporary injunction in an appeal filed by the Respondents/ Defendants.

4. The dispute is in respect of an access in property under Survey Nos. 16/1 and 16/2. By the impugned judgment and decree, the Trial Court has decreed the suit for declaration that the suit access is a private access and restrained the respondents from interfering with the access. In an appeal filed against the impugned judgment, the respondent – defendant sought stay of execution of the impugned decree. The respondent – defendant also filed an application dated 13/10/2015 stating that they have filed another application for restraining the appellants – plaintiffs from interfering with the use of the suit access. The learned District Judge has stayed the execution of the decree and further granted the application for temporary injunction with costs. Aggrieved by the latter part of the order, the appellants – plaintiffs have filed this Appeal.

5. The learned counsel for the Appellants and Respondents do not dispute that the respondent – defendant had not filed any separate application for temporary injunction as stated in the application dated 13/10/2015. Even otherwise, the learned Trial Judge could not have granted injunction against the plaintiffs in such a cursory manner in an appeal filed by the Defendant challenging the decree in favour of the Plaintiffs. The impugned order to the extent of granting of temporary relief in favour of the respondents is totally perverse and cannot be sustained. Hence, said part of order is set aside.

6. The Civil Application stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)