

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

WRIT PETITION NO.7859 OF 2019

Revji Gajaba Shirke

(since deceased) through L.Rs.

1A. Muktabai Revji Shirke and Ors. ... Petitioners

Vs.

Kundalik Bhaguji Shirke and Ors. ... Respondents

.....

Mr. T. D. Deshmukh I/b. Mr. Sagar M. Kursija for the Petitioners.

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CORAM : M. S. KARNIK, J.

DATE : 1st OCTOBER, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned counsel for the petitioners.
3. The petitioners-plaintiffs has filed this petition challenging the order dated 2.11.2018 passed by the Appellate Court setting aside the order passed by the Trial Court below Exhibit 5. The plaintiff filed an application Exhibit 5 for restraining the defendants from creating any third party interest in the suit property. This order of the Trial Court is set aside by the Appellate Court by a reasoned order.

4. I have gone through the reasons recorded by the Appellate Court. I do not think this to be a fit case to interfere with the discretion exercised by the Appellate Court while rejecting the application filed by the plaintiffs below Exhibit 5. However, it is made clear that the observations made by the Appellate Court in the impugned order are prima facie in nature and only for the purpose of deciding the Exhibit 5 application. The Trial Court will obviously proceed with the suit on its own merits and shall not be influenced by any of the observations made by the Appellate Court in the impugned order dated 2.11.2018.

5. With these observations, the petition is rejected with no order as to costs.

(M. S. KARNIK, J.)