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

**APPEAL FROM ORDER NO. 364 OF 2016
WITH
CAA NO. 472 OF 2016**

Shri Gamaram Shyamlal Kanojia

..Appellant

Vs

Mr. Hardevram Kanojia & Anr. .

..Respondents

Mr. Shrishail Sakhare for the Appellant.

Mr. Vijay Singh for Respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 8th November 2019.

P.C.:

1] By the present Appeal from Order, the appellant has impugned the Order dated 7th September 2015 passed Notice of Motion No.38 of 2015 in S.C. Suit No. 788 of 2014 filed by the appellant, thereby dismissing the said Notice of Motion with cost.

2] Heard the learned counsel for the appellant and the learned counsel for the respondent No.1. Perused the record.

3] The record indicates that, it is the case of the appellant that, his father along with defendants/respondents herein have purchased the suit property i.e. shop gala. That the father of the applicant expired in the year 1992

at Uttar Pradesh. The Office of the District Collector, Mau, State of Uttar Pradesh has issued heirship certificate in favour of the appellant. The appellant preferred the said suit for declaration of partition and for injunction against the respondents restraining them from alienating and/or selling the suit property and from creating third party right or interest in it. The Notice of Motion was filed by the appellant for interim relief, however, the Trial dismissed said Notice of Motion with cost by impugned Order dated 7th September 2015.

4] During the course of argument, the learned counsel for the respondent No.1 on instructions submitted that, the respondent No.1 does not intend to create third party right, title or interest in the suit shop gala or alienate it during the pendency of the suit instituted by the appellant. The said statement is accepted as an undertaking given to this Court. The said statement sufficiently protects the interest of the appellant.

5] In view of the above, there is no need to interfere with the impugned Order dated 7th September 2015. Appeal from order is accordingly disposed off.

In view of disposal of the Appeal from Order, Civil Application does not survive is accordingly disposed off.

(A.S.GADKARI, J.)