

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

**APPEAL FROM ORDER NO.661 OF 2019  
WITH  
CIVIL APPLICATION NO.758 OF 2019  
IN  
APPEAL FROM ORDER NO.661 OF 2019**

Smt. Kanta Dnyaneshwar Gaware & Ors. ... Appellants  
Versus  
Bhagwan Narayan Tingre and Anr. ... Respondents

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Mr. Tukaram S. Shengde for Appellants.  
Mr. S.B. Deshmukh for Respondent No.1.  
Khushbu Marwadi I/b. Jay & Co. for Respondent No.2.

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**CORAM : M. S. KARNIK, J.**

**DATE : 10<sup>th</sup> JULY, 2019.**

**P. C.:**

1. Heard learned counsel for the appellants and learned counsel for the respondents.
2. The present Appeal is filed challenging the order dated 12.06.2018 passed by the District Judge-20, Pune rejecting the application (Exhibit 4) filed by the present appellants/original plaintiffs to restrain respondent No.1 by an order of injunction from alienating the suit property or parting with possession thereof during pendency of Appeal.

3. Learned counsel for the appellants pointed out that the father of the plaintiff No.1 executed the sale deed in the year 1996. He would submit that the sale deed was executed without any legal necessity. The plaintiffs therefore filed a suit for declaration that the sale deed is null and void. The Trial Court dismissed the suit.

4. In the submission of learned counsel the Trial Court has erred in coming to the conclusion that there was a legal necessity to dispose of the suit property. He would further urge that the plaintiffs did not consent for the sale of the property. He would further submit that if interest of the plaintiffs is not protected during the pendency of the Appeal and if third party interest is created by the respondent it would lead to further complications. He would submit that the Appellate Court therefore in these facts should have granted the injunction as prayed for.

5. Learned counsel for the respondents supported the order passed by the Appellate Court.

6. I find from the record that there was no injunction operating during the pendency of the suit. Learned counsel for the appellants explained that the specific application for injunction was not made and not pressed. The Appellate court has taken into consideration that during pendency of the suit, the respondent No.1 did not alienate the suit property and there is no likelihood that the respondent No.1 may alienate the suit property.

7. Be that as it may, as the plaintiffs have alleged fraud, this aspect would be gone into by the Appellate Court when the Appeal is heard on merits. Suffice it to observe that the plaintiff No.1 and his son are attesting witnesses to the sale deed.

8. In this view of the matter, it is not possible to accept the request of the learned counsel for the appellants that the injunction be granted restraining the respondents alienating the suit property. I do not find any error in the order passed by the Appellate court.

9. The Appeal is dismissed.

10. In view of the dismissal of the Appeal From Order, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

( M. S. KARNIK, J. )