

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9593 OF 2015***

Dhondiram Dharma Aajge & Ors.

... Petitioners

Vs

Vishwanath Chiman Kanade & Ors.

... Respondents

Mr. Milind M. Sathaye, Advocate for Petitioners.

Mr. Ashok B. Tajane, Advocate for Respondents No. 1 to 6.

CORAM : SANDEEP K. SHINDE J.

DATE : June 21st, 2019

P.C. :

1. Petitioners/ plaintiffs are aggrieved by the order dated 11.11.2011 passed by the Ad-hoc District Judge and Assistant Sessions Judge, Malegaon passed in Civil Miscellaneous Appeal No. 31 of 2011.
2. Petitioners/ plaintiffs filed Regular Civil Suit No. 249 of 2010 seeking declaration that the sale deed dated 05.08.1980 is not binding on them and for perpetual injunction to restrain the defendants from interfering with their possession in the suit property. The defendants no. 1 to 6 raised counter claim and also filed an application for injunction to restrain the plaintiffs from interfering with their possession in the part of suit property. The Trial Court granted the application of the plaintiffs and dismissed the

application filed by the defendants (in counter-claim) by order dated 27.09.2011. Aggrieved by this order, the defendants filed Civil Miscellaneous Appeal No. 31 of 2011 before Learned District Judge, Malegaon, Nashik. Learned Judge allowed the appeal and thereby set aside the order which was passed in favour of the plaintiffs and granted the application for temporary injunction preferred by the defendants. It is against this order, the original plaintiffs in the suit have preferred this petition.

3. The impugned order was passed in November, 2011 and since parties to the suit have led the evidence, the propriety demands no interference in the impugned order at this stage.

4. In view of this, I am not inclined to interfere with the order, which is in force for about eight years and more. The petition is therefore dismissed.

5. It is however clarified that the Learned Trial Judge shall decide the suit on its own merits, without being influenced by order passed in the Civil Miscellaneous Appeal No. 31 of 2011.

6. Petition is disposed of accordingly.

(SANDEEP K. SHINDE, J.)