

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

**APPEAL FROM ORDER NO. 67 OF 2018
WITH
CIVIL APPLICATION NO. 94 OF 2018**

Ganga Prasad Chetnarayan Mishra & Ors. Appellants

Versus

Shah Babulal Khimaji & Others Respondents

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Mr. Sagar Talekar i/b S.R. Agarkar for the Appellant

Mr. Yogesh Dandekar for Respondent No.2

Mr. D.P. Shah for Respondent Nos.1A to 1E.

CORAM : A. S. GADKARI, J.

DATE : 16th JANUARY, 2020

P.C.

1. The Notice of Motion No.3996 of 2008 filed by the Appellant, seeking stay to the execution of decree dated 11.12.2001, passed in Suit No.4828 of 2008 with further prayer of perpetual injunction restraining the Respondents (Defendants) from disturbing exclusive possession of the Appellants (Plaintiffs) has been dismissed by the Trial Court by its order dated 21.04.2015.

2. It is the contention of the Appellants that, the suit filed by the Defendants was decreed on 11.12.2001 when the Plaintiff Chetnarayan Mishra was already dead. The Record further indicates that, the Appellants thereafter sold and disposed of suit property in favour of

M/s.Shakti Corporation by way of a registered conveyance-deed dated 11.12.2001.

3. Mr.Shah, learned Counsel for Defendants submitted that, in the said conveyance-deed said fact of demise of Chetnarayan Mishra is clearly mentioned.

It is clear that Chetnarayan Mishra was no more while executing the said document in favour of M/s.Shakti Corporation. Respondent No.2 herein, has further purchased the said property from M/s.Shakti Corporation with clear understanding of passing of said decree dated 11.12.2001. Record further indicates that, as of today, the Appellants are not in possession of the suit property.

4. In view thereof, no prima facie case is made out by the Appellants. The Balance of convenience does not lie in favour of the Appellants. No irreparable loss or harm will be caused to the Appellants, if injunction is not granted in their favour.

5. There are no merits in the appeal. The Appeal is accordingly dismissed.

6. In view of dismissal of the Appeal, Civil Application No. 94 of 2018 does not survive and is accordingly disposed off.

(A. S. GADKARI, J.)