

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

APPEAL AGAINST ORDER NO. 11 OF 2019

1. Sau. Chandrakala w/o Maroti Dhale,
aged 56 years, Occ. Cultivator
2. Sau. Giridhar s/o Maroti Dhale,
aged 29 years, Occ. Cultivator
3. Ku. Vishakha d/o Maroti Dhale,
aged 25 years, Occ. Education,
4. Shri Khemraj s/o Maroti Dhale,
aged 24 years, Occ. Cultivator

No. 1 to 4 are r/o Shekapur (Bai),
Tahsil Hinganghat, District Wardha.

5. Sau. Vaishali w/o Rameshrao Chivane,
aged 32 years, Occ. Household, R/o Hingana,
Tq. Hingana, District. Nagpur.

.... **APPELLANTS**

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1. Shri Maroti Raghobaji Dhale,
aged about 61 years, Occ. Cultivator,
R/o Shekapur (Bail), Tahsil Hinganghat,
District Wardha.
2. Sau. Satyabhama w/o Vijay Wankar,
aged 61 years, Occ. Household,
R/o Plot No. 19, Venuvan Society,
Friends Colony, Kator Road,
Near Burande School, Nagpur,
Tahsil and District Nagpur.

.... **RESPONDENTS**

Shri D.H. Sharma, Advocate for appellants.

Respondent no. 1 is served.

Shri B.B. Pantawane, Advocate a/w Shri G.S. Shegaokar, Advocate for respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 21/01/2021.

JUDGMENT :

1. Heard Shri D.H. Sharma, learned Advocate for appellants and Shri B.B. Pantawane, learned Advocate for respondent no.2.

2. The appellants herein have challenged the order dated 21.08.2018 whereby learned District Judge, Wardha has dismissed the application for temporary injunction filed in Civil Suit No. 6 of 2016, seeking to restrain respondent no.2 from transferring or alienating the Property under Survey No. 95 of village Seloo. The said property shall be hereinafter referred to as the 'suit property'.

3. The appellants claim to be the co-owners of the suit property. They have filed a suit for cancellation of the sale-deed dated 12.12.2014 whereby respondent no.1 has sold the suit property in favour of respondent no. 2. The appellants claim that respondent no.1 had borrowed Rs.1,00,000/- from respondent no.2 and the sale-deed

was executed as a security, without any consideration. There was an understanding between respondent no. 1 and respondent no. 2 that the said sale-deed would not be acted upon. It is further alleged that respondent no.1, who is only a co-owner of the suit property was not competent to sell the suit property to respondent no.2.

4. The respondent no. 2 has denied that the appellants have right to the suit property. He has also denied that the sale-deed was executed as a security and that there was understanding not to act upon the sale-deed.

5. The trial Court has dismissed the application for injunction mainly on the ground that the appellants have not *prima facie* established that the sale-deed is sham and that there was an understanding that it would not be acted upon.

6. The only question, which falls for consideration is whether the appellants have *prima facie* established that the sale deed is a sham document, executed without consideration.

7. At the outset, it may be noted that though the appellants claim to be the co-owners of the suit property, there is no *prima facie* material on record to substantiate the said claim. The survey record

indicates that the suit property is recorded in the name of respondent no. 1. The respondent no. 1 had executed the sale-deed in favour of respondent no. 2 on 12.12.2014. The said sale-deed is registered, and carries presumption of genuineness. It is also pertinent to note that pursuant to the execution of the said sale-deed, name of respondent no. 2 has been recorded in Survey records. This entry was effected in the year 2015 whereas the suit for cancellation of the sale-deed and the application for injunction have been filed in the year 2016. Furthermore, the records reveal that after execution of the sale-deed in favour of respondent no. 2, respondent no. 1 has gifted the suit property dated 29.10.2015 in favour of all the appellants. This fact coupled with the fact that respondent no.1 has not contested the suit thus *Prima facie* indicates that this is a collusive suit. Under the circumstances, the appellants have not made out a *Prima facie* case for grant of interim relief. The impugned order is neither perverse nor arbitrary. Hence the appeal has no merits and is accordingly dismissed.

JUDGE

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