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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.945 OF 2020**

Bhimrao Ananda Katkar and Ors. Petitioners
V/s.
Janardhan Tukaram Kamble and Ors. Respondents

Mr. Mahindra B. Deshmukh, Advocate for the Petitioners.
Mr. Pramod G. Kathane, Advocate for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 23, 2022.

P.C.:

1) Order impugned is dated September 20, 2019 passed by the District Judge, Sangli whereby petitioners - defendant Nos.18 and 20 are restrained from carrying out construction over the part of the suit property which is alleged to be in their possession by virtue of a registered sale deed executed by the respondent - plaintiff.

2) Submissions of Mr. Deshmukh are, the suit is pending since 2012 and the plaintiffs themselves have executed the sale deed in favour of the petitioners- defendant. On earlier occasion, attempt to start construction on the part of the Petitioners on similar set of facts through a prayer for temporary injunction was

not pressed. However, when the trial in the suit has advanced the Respondent – Plaintiff have taken out present application for similar relief which is granted by the first Appellate Court merely for asking.

3) Counsel for the Respondent – Plaintiff would oppose the prayer for allowing the writ petition and support the order impugned on the ground that unless shares in the property are ascertained, nature of the property cannot be changed. According to me, the earlier application for grant of temporary injunction was not opposed as the Petitioners voluntarily stopped construction, however, since the Petitioners has started construction again, the application came to be moved.

4) I have appreciated the said submissions.

5) The Appellate Court, while ordering grant of temporary injunction, restrained the Petitioner Nos.18 and 20 from carrying out construction over part of the suit property with an observation that whether Respondent – Plaintiffs are ancestors, is to be ascertained from the evidence. If the Petitioners are permitted to carry out construction, same will result in changing the nature of suit property and as such proceeded to pass impugned order.

6) The fact remains that the sale deed executed by the plaintiffs in favour of the present Petitioners - defendant is not under challenge in the suit. That being so, even if the suit is decreed, it is always open for the Petitioners to claim right over particular portion of their share in executing a decree based on sale deed which of course will be decided in accordance with law.

7) Apart from above, it cannot be said that the nature of property will undergo an irreversible change, in case, if the suit is decreed. The suit property which is purchased by the Petitioners if ordered to be given to the share of the Plaintiff, either the Petitioners can remove the construction, if so prayed and directed by the executing Court, or else the Respondent - Plaintiff will get the developed property at the cost of Petitioners.

8) In that view of the matter, the appellate Court, in my opinion, has committed an error in granting temporary injunction. As such, the order of grant of temporary injunction is hereby quashed and set aside. The order impugned stands modified to that effect. Writ petition stands partly allowed.

[NITIN W. SAMBRE, J.]