

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**APPEAL FROM ORDER NO. 520 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO. 694 OF 2018**  
**INTERIM APPLICATION NO. 706 OF 2019**  
**INTERIM APPLICATION NO. 710 OF 2019**  
**INTERIM APPLICATION NO. 712 OF 2019**  
**INTERIM APPLICATION NO. 713 OF 2019**

Laxman Vishnu Marane .. Appellant

Versus

Shri Suresh Raman Choudhari & .. Respondents  
Ors.

...

Mr. S. S. Patwardhan for the Appellant/Applicant.

Mr. Prashant Hazare for Respondent nos. 4 and 5  
Respondent.

...

**CORAM: BHARATI DANGRE, J.**  
**DATED : 31<sup>st</sup> MARCH, 2022**

**P.C:-**

1. Heard learned counsel for the appellant, Mr. Patwardhan and the learned counsel for respondent nos. 4 and 5 who are the contesting respondents i.e. defendant nos. 1 and 2 to the suit.

2. Office record indicate that the other respondents are not served, but since they appear to be subsequent purchasers from respondent nos. 4 and 5, I deem it expedient to proceed with the Appeal, without they being served.

3. The appellant is the original plaintiff and the suit property is claimed to be the joint family property, received by him on account of acquisition of his share. The plaintiff agreed to sell 2 R of land from Gat No. 106 to respondent no. 1 and a sale deed was executed in favour of respondent no. 2 in respect of the entire 4 R of land at the Gat no. 106/2 and 2 H 2 R of land from Gat No. 81/3. It is alleged the sale is executed by playing a fraud and misrepresentation.

He filed a Suit, being, Special Civil Suit No. 822 of 2015 for declaration and since he was apprehensive that the defendants are about to dispose of the property, he sought restraint order. In the suit the defendants filed their written statement opposing the claim. The plaintiff also filed application for temporary injunction restraining the defendants to create third party interest in respect of the property described in paragraph 1 of the application till decision of the suit. This application came to be rejected by the impugned order dated 16<sup>th</sup> January, 2018 passed by the Additional Judge, Small Causes Court and Jt.Civil Judge, Senior Division, Pune. Perusal of the impugned order and the reasoning therein, on determination of the issue as to whether the plaintiff has made out a prima facie case and

whether the balance of convenience lies in his favour of the plaintiff, the Learned Judge has answered both the points in the negative and recorded that the recital of the sale deed reveal that the plaintiff had alienated the property to defendants without making any reference to the fact that he had sold the property being in the capacity as a Manager/Karta of the Joint Family. It is also recorded that, in the plaint the plaintiff has pleaded to be in possession of the suit property but the factum of possession is conspicuously absent. Moreover since he is not seeking any relief as regards possession of the property, recording that his claim that the sale deed were executed on misrepresentation was held to be a matter of trial and recording that there is no prima facie case made out at this stage, the application came to be rejected.

4. I find no illegality in the impugned order as the three ingredients for grant of temporary injunction are found to be absent in the application and on the pleading, placed before the learned judge.

In the wake of the above the case does not warrant interference and by upholding impugned order, the Appeal is dismissed.

In the wake of the disposal of the appeal, all the pending Civil Applications are also disposed off.

**( SMT. BHARATI DANGRE, J.)**