

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

***APPEAL FROM ORDER NO.66 OF 2017
WITH
CIVIL APPLICATION NO.92 OF 2017***

Shri Dhonduram Pandu Rupekar and
Ors.

...Appellants

Vs

Shri Vijay R. Nenci and Anr.

... Respondents

...

Mr. Sameer Tendulkar with Mr. Sawrath Mashelkar for the
Appellants/Applicants.

Mr. Atul Damle, Senior Advocate with Ms. Disha Dave i/by
Maulik Tanna For Respondent Nos.1 and 2.

Mr. Miraj R. Bharapuria for R.No.3.

CORAM : SANDEEP K. SHINDE J.
DATE : FEBRUARY 25, 2022.

P.C. :

Heard learned counsel for the parties.

2 Appellants/Plaintiff instituted Special Civil Suit No.152 of
2013 in the Court of Civil Judge, Senior Division, Panvel seeking the
decree of cancellation of registered sale deed dated 12th July, 2012.
Pending suit, appellants sought interim relief to restrain the

defendants from disturbing their possession in the suit property and the next prayer was to restrain the defendants from creating third party right in the suit property. The learned Trial Court in paragraphs 19 and 21 recorded prima-facie satisfaction, that the registered suit sale deed, convey that possession of the suit property has been handed over to the defendants. In paragraph 19, trial Court has referred to statutory permissions granted by the Sub-Divisional Officer permitting the plaintiffs to sell the suit property to the defendants. Curiously, these permissions were not challenged. Therefore, prima-facie finding/satisfaction recorded in impugned order, is founded on evidence available on record and thus, not perverse.

3 Be that as it may, Mr. Damle, learned Senior Counsel for the appellants, has pointed out that the suit in question was instituted in 2013 and along with that, application below Exhibit 5 was moved. Yet, vide application below Exhibit 22, plaintiffs did not press the application for interim relief and requested the trial Court to decide the same along with the suit. A copy of the application

Exhibit 22 is taken on record and marked **“X-1” for Identification.** May be for some reasons, the plaintiffs moved another application below Exhibit 16 in the year 2016 seeking identical reliefs, which were sought below Exhibit 5. Second application was moved in 2016. The application below Exhibit 22 does not disclose change in circumstances, which necessitated plaintiff to move it three years after instituting the suit. Thus, having regard to the facts of the case, appeal deserves no consideration. It is rejected.

4 As the appeal itself is disposed of, nothing survives in Civil Application therein and same is also disposed of.

(SANDEEP K. SHINDE, J.)