

Pooja K.

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 63 OF 2022  
WITH CIVIL APPLICATION NO. 1493 OF 2020  
IN APPEAL FROM ORDER NO. 63 OF 2022

|                                |                |
|--------------------------------|----------------|
| Rangnath Pandharinath Jorvekar | ... Appellant  |
| <i>Versus</i>                  |                |
| Sandeep Gorakshnath Jorvekar   | ... Respondent |

...

Mr. V.S. Bedre – Advocate for Appellant  
Mr. V.H. Dighe – Advocate for Respondent

....

**CORAM : GAURI GODSE, J.**  
**DATE : 9<sup>th</sup> January, 2023**

**PER COURT :**

1. This appeal is filed for challenging the order dated 6<sup>th</sup> May, 2019 passed by the District Judge -1, Kopargaon below Exh.5 in Regular Civil Appeal No. 3 of 2019. By the said order application filed by the present appellant for temporary injunction is dismissed. Appellant filed suit for simplicitor injunction based on title. During the pendency of the suit there was interim relief granted in favour of appellant thereby restraining defendant from causing obstruction over suit property. That order was passed on 20<sup>th</sup> January, 2014. Thereafter Regular Civil Suit no. 369 of 2011 was dismissed on

30<sup>th</sup> November, 2018. Since dismissal of the suit there is no interim protection granted in favour of appellant.

2. Learned counsel for the appellant states that, his suit was based on title. Sale-deed in his favour was not challenged by the respondent. Hence, the title of the appellant is clear and in such circumstances, it is necessary that the possession of the appellant be protected during the pendency of the appeal. He further states that, there is no issue framed and decided with respect to title of the appellant, as there is no dispute over the title of the appellant in respect of the house property. In this view of the matter, he submits that his possession needs to be protected during the pendency of the appeal.
3. Learned counsel for respondent states that, in the suit issue is raised on the title that the suit house is a joint family property. He further submits that, suit is for simplicitor injunction. Thus, grant of any interim relief would amount to granting the final relief that is claimed in the suit. He states that appeal is ready for final hearing and fixed for hearing on 16<sup>th</sup> January, 2023. He submits that, appellant has not made out any case for granting temporary injunction at this stage, which is infact in the nature

of final relief. He therefore submits that, appeal may be dismissed.

4. It is true that during the pendency of the suit there was interim relief passed in favour of the appellant however, the suit filed by the appellant is dismissed and there is no specific issue framed and decided with respect to title of the appellant.
5. Perusal of the judgment of the Trial Court do not show any specific finding of exclusive possession of the appellant. The suit is filed for simplicitor injunction without claiming any declaration. Though there is no interim relief in favour of appellant, admittedly the sale-deed stands in the name of present appellant. However, since the suit is for simplicitor injunction, grant of any interim protection as prayed by the appellant, the same would amount to granting final relief in the suit. Suit of the present appellant is dismissed on 30<sup>th</sup> November, 2018. Since then there is no interim protection in favour of the appellant. Now the appeal is ready for final hearing. Hence, it will not be appropriate to pass any order that would amount to granting final relief in the suit. However, present appeal can be disposed of by observing that the findings recorded in the

impugned order are prima-facie observations and same would not in any way affect the decision of the appeal and the first appeal shall be decided on its own merits without influenced by the observations made in the impugned order as well as present order.

6. Hence Appeal From Order is disposed of in above terms.
7. In view of the disposal of the appeal Civil Application is disposed of as infructuous.

**[ GAURI GODSE ]**  
**JUDGE**