

VRJ

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

WRIT PETITION NO.5346 OF 2019

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Ambadas Dnyanoba Shetphalkar Since
Deceased Through Legal Heirs ... Petitioners

V/s.

Rukminibai Baburav Wakharkar & Ors. ... Respondents

Mr. Sagar A. Joshi for the petitioners.

Mr. Ajay A. Joshi for the respondents.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2023

P.C.:

1. The petitioner is original plaintiff who filed suit for possession. During pendency of the suit, the petitioner filed an application under Order 39 Rules 1 and 2 of the Civil Procedure Code, 1908, restraining defendants from creating third party rights or changing nature of the suit. Both the Courts below rejected the application holding that in earlier round of litigation between the parties, the defendant is held to be owner of the property.

2. I have perused the judgment in Regular Civil Suit No.65 of 2004. Issue No.1 is in relation to ownership of present respondent over the suit property which has been answered in affirmative, with the result, the finding of ownership intra-parties has attained finality.

3. Learned advocate for the petitioner states that the appeal against the said judgment is pending. However, on the date of adjudication of temporary injunction application, the finding rendered in favour of the respondents regarding ownership was not upset. Hence, based on such finding, the Court recorded a prima facie finding in the present proceeding that respondent is owner. Ultimately, if the petitioner succeeds in the appeal, it will have relevance while deciding the suit on merits. However, at the consideration of temporary injunction application, the judgments of both the Courts below are based on relevant consideration. There is no error of jurisdiction.

4. The writ petition is dismissed. No costs.

5. It is made clear that observations made by this Court and Courts below are restricted to the adjudication of temporary injunction application and same would not enhance the Trial Court while deciding the suit on merit.

(AMIT BORKAR, J.)