



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

APPEAL AGAINST ORDER NO.13 OF 2026

Sandeep M. Sushir and ors. **Vs.** Riyajoddin Isamoddin and anr.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. V. A. Lohia, Advocate for appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 17.03.2026.

. The father of the present appellants has suffered a decree for specific performance of contract. In the execution proceedings arising out of the said suit for specific performance, the present appellants had preferred an objection, which came to be dismissed on merits by the learned Executing Court. Appeal preferred against the said order rejecting the objection is also dismissed.

2. Thereafter, the present appellants filed a suit for partition and separate possession, which is dismissed by the learned Trial Court.

3. The appellants have preferred an appeal challenging the said decree, which is registered as Regular Civil Appeal No.40 of 2023. In this appeal, the appellants have filed an application for grant of temporary injunction vide Exhibit-7, *inter alia*, praying that till the final disposal of the appeal, the respondents/defendants should be restrained from creating third party

interest over the suit property. This application is rejected by the learned First Appellate Court.

4. Perusal of the order impugned will demonstrate that the learned First Appellate Court has taken into consideration the adjudication done by the learned Executing Court while deciding the objection raised by the present appellants to the decree for specific performance. The contention in the said objection was that the suit property was ancestral property and, therefore, the father could not have entered into agreement of sale with respect to the same in the absence of any legal necessity. The same contention is agitated in the Civil Suit. The Civil Suit is also dismissed. The learned First Appellate Court, while dealing with *prima facie* case, has rightly taken into consideration that the adjudication on the same issue between the parties in the execution proceeding where the issue is decided against the present appellants and has accordingly rejected the application for grant of temporary injunction.

5. Having perused the order impugned and record of the case, particularly order passed in the earlier proceedings, this Court sees no reason to take a different view of the matter. Appeal Against Order is, therefore, **dismissed** with no order as to costs.

6. These observations are obviously made for deciding *prima facie* case and will not be taken into

consideration by the learned First Appellate Court while deciding the appeal on merits.

(ROHIT W. JOSHI, J.)

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