

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

WRIT PETITION NO.11547 OF 2015

Vijay Madhav Jagtap & anr. ..PETITIONERS

VERSUS

Vinodkumar Kisandas Premani
and ors. ..RESPONDENTS

Mr Kiran M. Nagarkar, Advocate for petitioners

**CORAM : N.W. SAMBRE, J.
DATE : 30th November, 2015**

ORAL ORDER :

By an order dated 30th September, 2013, passed by Civil Judge Junior Division, Rahata, below Exh.5, in Regular Civil Suit No.491 of 2011, an injunction is clamped against the respondents-defendants, restraining them from creating any third party interest or charge on the suit property, which was subject-matter of challenge at the behest of respondents herein, in Misc. Civil Appeal No.68 of 2013, which came to be allowed by an order dated 30th September, 2015, passed by District Judge-2, Kopargaon. Thus, the present petition.

2. Learned Counsel appearing on behalf of the petitioners would urge that the order of clamping injunction, passed by the learned Trial Judge, *prima facie* depicts consideration as regards the nature of dispute involved in the proceedings. According to him, once the suit property is destroyed

either by creating third party interest or by creating charge, the object of filing of the suit will be frustrated, which is lost sight of by the learned lower appellate court, while passing the order impugned.

3. According to the learned Counsel, the suit being of 2011, hearing thereof can be expedited, by directing the parties to maintain *status quo*, as regards the suit property.

4. Considering the submissions made by learned Counsel appearing on behalf of the petitioners, particularly in the background of order passed by the Civil Judge Junior Division, Rahata on 30th September, 2013, clamping injunction, it is required to be noted that the said Court has taken into account 7/12 extracts in relation to Gat No.25/3, to the extent of 10 R land and thereafter though noticed that there are contradictory pleadings, still proceeded to pass an order of clamping injunction.

5. It is not in dispute that the proposition of law is that, the entries in 7/12 extract are only for fiscal purpose and are not conclusive about the proof as to possession of the parties. In view thereof, what was expected of the Court was, to dwell upon the title of each of the parties, based on the documentary evidence brought before it and form *prima facie* opinion, so as to clamp an injunction, if case to that effect is made out. Non consideration of the above referred aspect very much weighed before the District Judge to reverse the findings recorded by the Civil Judge Junior Division.

(3)

6. Learned District Judge has given detailed reasons as to why the order of injunction passed by the Trial Judge is not sustainable.

7. I see that the order of the District Judge consists of sound reasoning, in accordance with the facts and the law that is applicable.

8. In that view of the matter, no case for interference, in extraordinary jurisdiction of this Court, is made out. Petition fails and stands dismissed, with no order as to costs.

(N.W. SAMBRE, J.)

amj