

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

16 CRA NO.105 OF 2019

MOHAMMED SALEEMUDDIN MOHAMMED NIZAMUDDIN
VERSUS

BABURAO DHONDIBA SATHE (DIED THROUGH HIS L.RS.)
RUKHMANIBAI RANGNATH SATHE AND OTHERS

...

Advocate for Petitioner : Mr. Deshmukh Javed Abdul H.
Mr. N.E.Deshmukh, Adv. For Resp.No. 11;
Mr.S.G. Chapalgaonkar, Adv. For R.Nos.12 & 13.

CORAM : P.R. BORA, J.

DATED : 24th June, 2019.

PER COURT:-

1. The present CRA was listed on 21st June, 2019 and was called up at the fag end. After hearing the submissions advanced by Advocate Javed Deshmukh, learned counsel appearing for petitioner and more particularly having regard to the fact that interim relief, as has been sought in the present CRA was operating in favour of the petitioner an ad-interim order was passed by this Court, restraining the respondents from creating any third party interest in the suit property.

2. Sometime after passing of the aforesaid order, Shri Chapalgaonkar, learned counsel appeared before the court, who is appearing in the matter for Respondent Nos. 12 and 13. The learned counsel submitted that though caveat is filed in the matter, copies of CRA as well as CA were not served upon the respondents-caveator. The learned counsel submitted that there is absolutely no case for

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granting any relief. In the circumstances, the matter was directed to be listed today and accordingly today, I have heard the learned counsel appearing for the parties.

3. After having heard the learned counsel and on perusal of the impugned judgment, it is revealed that the trial court has recorded an unambiguous finding that the suit filed by the petitioner was barred by the principles of *res judicata*. The learned counsel for the respondents has also tendered across the Bar a copy of the order passed in Second Appeal by this Court. It is brought to my notice that the properties, which are claimed to be the wakf properties, were, in fact, the Service *Inam* properties and the decisions in that regard were delivered way back and the properties are in possession of the respective respondents since years together. The learned counsel submitted that this is a third suit filed by *Mutawalli* claiming same relief. The learned counsel, taking me through the findings recorded by the Court, submitted that granting of any interim relief would be unnecessary harassment to the respondents herein.

4. The learned counsel appearing for the revision applicant though tried to submit that innocuous order is sought by the revision applicant, and no prejudice is likely to be caused to the respondents, I am not convinced with the submissions so made. It has to be further stated

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that all the true facts must have been brought to the notice of the court before securing any order from the court. In the circumstances, the order passed by this Court on 21st June, 2019, is recalled and following order is passed.

ORDER

- i. Issue notice to the respondents, returnable on 24th July, 2019.
- ii. Mr. Chapalgaonkar and Mr. Deshmukh, learned counsel waive notice for the respective respondents.
- iii. No interim relief.

**(P.R. BORA)
JUDGE**

BDV