

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CIVIL APPLICATION NO. 8550 OF 2014
IN SAST/18990/2014 WITH CA/8551/2014 IN
SAST/18990/2014

RASHID KHAN RAHEMAN KHAN AND OTHERS
VERSUS
YUSUF KHAN RAHEMAN KHAN AND OTHERS

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Advocate for Applicants : Mr. Amol Gandhi, Advocate h/f
Mr. Vakil Afzal Husain M.

Advocate for Respondent No.2 and 3: Mr. Nikhil S. Tekale.
Advocate for Respondent Nos.4a to 48: Mrs. Ansari A. N.

CORAM: T. V. NALAWADE, J.
DATED: 23rd OCTOBER, 2015.

PER COURT:

1. The application is filed for condonation of 5741 days delay caused in filing second appeal against judgment delivered by the first Appellate Court. Both the sides are heard.

2. It appears that Regular Civil Suit No. 515 of 1974 was filed by present Appellants along with few other parties for relief of partition and possession and in that suit relief was claimed in respect of some agricultural

lands, including land Survey No.118. The suit was decreed and 4/15th share was given in favour of the present Appellants, applicants. That decision became final and execution proceeding bearing No.1 of 1985 filed on the basis of decree of the said proceeding is still pending.

3. It appears that few of the plaintiffs of Regular Civil Suit No.515 of 1974 filed Regular Civil Suit No.1140 of 1994 against the present Appellants and others for relief of partition and possession. In that suit, relief was claimed in respect of Gat No.237. It is contended that Survey No.118 was converted to Gat No.237 and so the subject matter of previous suit was included in the subsequent suit. It appears that the present appellants were defendant Nos.2 to 4 in the said suit but no steps were taken to serve the suit summons on them and so the suit against the present Applicants was dismissed. It appears that then the plaintiffs of suit No.1140 of 1994 compromised the matter with defendant Hasan Khan Rahaman Khan and in the said suit, there were house properties also and the decree is given in respect of house properties.

4. It appears that on the basis of compromise decree made in Regular Civil Suit No.1140 of 1994 application is moved in execution proceeding No.1 of 1985 by the parties of Regular Civil Suit No.1140 of 1994 and Regular Civil Appeal No. 159 of 1996 and they have produced the compromise decree in the execution proceeding.

5. It is the case of the Applicants that the compromise decree was obtained behind their back and it is affecting their rights given in the first suit and so they want to challenge the compromise decree given in Regular Civil Suit No.1140 of 1994 and Regular Civil Appeal No. 159 of 1996. Submissions made do not show that any order is made by the executing Court in Execution No.1 of 1985.

6. The decree was given in first Regular Civil Suit No.515 of 1974 and that decree has become final and for execution of the said decree a proceeding is filed. If another suit was filed subsequent to the giving of the first decree, the executing Court will have to decide as to whether the second decree has affected the rights of the parties and whether the second decree is binding. When present applicants were not party to Regular Civil Suit No.1140 of 1994, there is no need for them to have fear

that the compromise decree of Regular Civil Suit No.1140 of 1994 will be executed against them. At present, nobody has filed execution proceeding on the basis of compromise decree obtained in Regular Civil Suit No. 1140 of 1994. There are procedural checks and the provisions given under Order 21 of Civil Procedure Code can be used by the Applicants in the present execution proceeding and also in other proceeding for execution if at all such proceedings are filed by the plaintiffs of Regular Civil Suit No.1140 of 1994. This Court feels that at present there is no need for the present Applicants to file one more proceeding for challenging the decree which is apparently not binding on them as they were not party to the suit. There is always liberty to the present Applicants to challenge the orders if any made in execution proceeding filed by them or in execution proceeding which may be filed on the basis of decree of Regular Civil Suit No.1140 of 1994. If the decree given in favour of the present applicants is disturbed then they can challenge such order. Due to this circumstance, this Court is avoiding to discuss the point of sufficient cause in the present proceeding. With

these observations, the present proceeding is disposed of.

7. Other civil application, for stay, also stands disposed of.

[T. V. NALAWADE, J.]

Dt.23/10/2015
ans/8550