

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

45 FIRST APPEAL NO. 2512 OF 2015
WITH CA/12077/2015 IN FA/2512/2015

BAPU NARAYAN GAIKWAD AND OTHERS
VERSUS
NARAYAN RAMCHANDRA GAIKWAD DECEASED THR HIS LRS SITABAI
AND ORS

...

Advocate for Appellants : Mr. Choudhary S. S.
AGP for Respondents-State: Mr. D R. Korde
Advocate for Respondents 1 to 3 : Mr. M. R. Sonawae

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CORAM : S. V. GANGAPURWALA, J.

DATE : 5th October, 2015

PER COURT :

1. Mr. Choudhari, the learned counsel submits that after the land acquisition reference is decided, the respondents moved an application for apportionment of the amount. The present respondents were not party in the reference. They could not have made the said application. According to the learned counsel, the judgment and decree passed by the Civil Court in Regular Civil Suit No. 239 of 2007 is assailed by the present appellants in an appeal before the District Court.

2. Mr. Sonawane, the learned counsel for the

respondents submits that substantive suit filed by the present respondents for partition and declaration has been decreed. It has been held that the Land Gat Nos. 245 and 246 are ancestral property. In view of the said judgment, the Reference Court had properly passed the order. In Clause 5 of the operative order of the RCS No. 239 of 2007, the Reference Court has specifically observed that all the persons are entitled for the said amount of compensation.

3. I have considered the judgment. Though it is submitted that the appeal is filed by the present appellants against the judgment and decree passed in Regular Civil Appeal No.239 of 2007, it is not brought on record that the appellate court had granted any stay to the said judgment and decree. The rights determined by the judgment and decree dated 18.02.2014 in RCS No. 239 of 2007 would be final, subject to the decision by the appellate court in the appeal filed by the present appellants. The Reference Court had only abided by the judgment and decree passed by the Civil Court in the substantive suit.

4. In the light of that, in the present appeal, I do

not see any ground to interfere with the said order. However, as the substantive appeal is filed by the present appellants against the judgment and decree passed in RCS No. 239 of 2007, I would direct the parties herein not to withdraw any amount for a period of 15 days so as to enable the present appellants to obtain necessary orders in the pending appeal filed by the appellant against the judgment and decree in RCS No. 239 of 2007.

5. The first appeal is accordingly disposed of. Civil application also stands disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC