

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.146 OF 2015
IN
SECOND APPEAL NO.285 OF 2014**

Smt.Anjira Ramchandra Pawar .. Applicant

vs.

Shri Hindurao Dattu Pawar & Others .. Respondents

Mr.Rajendra Pai i/b Ms.Neuty N. Thakkar for the applicant

Mr.Chetan G. Patil for the respondent nos.1 to 3

**CORAM : K.K.TATED, J.
DATED : 27/10/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by the plaintiff for an order of injunction restraining the respondents original defendants from creating any third party right, title and interest in respect of the suit property as described in paragraph 1(A) to 1(C) of the plaint and also for direction to the respondents defendants to deposit and or pay sum of Rs.1,25,000/- p.a. to the applicant plaintiff.

3 In the present proceeding, applicant plaintiff filed Regular Civil Suit No.861 of 2001 in the court of Joint Civil Judge, Junior Division, Satara claiming partition and separate possession of their share in the

property mentioned in paragraph 1(A), 1(B) and 1(C) of the plaint. That suit was decreed by the Trial Court on 30.6.2009 holding that the applicant plaintiff jointly have 5/16th share in the property i.e. House bearing Gram Panchayat No.84 situate at Village Dhavdashi, Taluka and District Satara more particularly described in paragraph 1(C) of the plaint and separate possession. Being aggrieved by the said decree, the applicant plaintiff preferred Regular Civil Appeal No.306 of 2009 before the District Court, Satara at Satara. That appeal was dismissed by the appellate court. Hence, applicant plaintiff preferred present Second Appeal. Second Appeal was admitted by this court (Coram: Ravi K. Deshpande, J.) by order dated 8.7.2014 in which following two questions of law were framed:

“(I) Whether the Courts below were right in rejecting the claim of the Plaintiffs to 1/4th share in property described in paragraph 1(a) of the plaint, which fell to the share of Ramchandra, being the ancestral property?

(II) Whether the Courts below were right in holding that the Will has been proved and the suspicious circumstances have been removed?”

4 The learned counsel for the applicant submits that this court by order dated 31.7.2015 recorded that the applicant has not shown any grievance in respect of prayer clause (a) in view of paragraph 6 of the Affidavit-in-Reply filed by the respondent dated 31.7.2015 where they specifically made a statement that they do not want to sell the suit properties in the present or near future.

5 The learned counsel for the applicant plaintiff submits that respondents are in possession of agricultural land which is described in paragraph 1(A) and 1(B) of the plaint. He submits that both the lands as described in paragraph 1(A) and 1(B) of the plaint are fertile lands and they are getting income out of that. Hence, this court be pleased to direct the defendants to deposit sum of Rs.1,25,000/- in the court and allow the applicant to withdraw the same on certain terms and conditions as this Hon'ble Court may deem fit and proper.

6 Advocate for the respondent vehemently opposed the present Civil Application to the extent of prayer clause (b). He submits that both the courts below rejected the plaintiff's contention about her share in respect of the suit property as described in paragraph 1(A) and 1(B) of the plaint. Hence, they are not entitled to any relief as claimed by prayer clause (b) of the present Civil Application.

7 I have heard both the sides at length. It is to be noted that in the present proceeding, both the courts below held that the applicant plaintiff is entitled her share in respect of the suit property as described in paragraph 1(C) of the plaint only. Hence, whatever income respondents defendants are getting from the properties as described in paragraph 1(A) and 1(B), at present, applicant cannot claim any share from the same. Considering these facts, following order is passed:

- a) Respondents defendants are restrained from selling the suit property as described in paragraph 1(A) and 1(B) of the plaint without leave of the court, till the hearing and final disposal of Second

Appeal.

- b) Prayer clause (b) of the plaint stands rejected.
- c) Civil application stands disposed off accordingly.

(K.K.TATED, J.)