

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1638 OF 2014
IN
SECOND APPEAL NO. 150 OF 1998**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. P. M. Arjunwadkar, Advocate for Applicants.

Mr. Vaibhav Gaikwad i/b A.M.Kulkarni, Advocate for Respondent no.1-original plaintiff.

**CORAM : R.G.KETKAR,J.
DATE : 20/03/2015**

PC:

1. Heard Mr. P. M. Arjunwadkar, learned counsel for the applicants and Mr. Vaibhav Gaikwad, learned counsel for respondent no.1-original plaintiff.

2. By this Application, the applicants have prayed for stay of further proceedings of Regular Darkhast No.14 of 1998 pending before the learned Civil Judge, Jr. Dn., Kurundwad.

3. Mr. Arjunwadkar submitted that respondent no.1 instituted suit for partition and separate possession. By Judgment and decree dated 29.6.1992,

the learned trial Judge dismissed the suit. Aggrieved by that order, respondent no.1 preferred Regular Civil Appeal No.290 of 1992. That Appeal was allowed on 17.1.1998 by the learned 5th Addl. District Judge, Kolhapur. Aggrieved by that decision, original defendants no. 3 and 4 preferred Second Appeal No.150 of 1998. By order dated 18.6.1998 after hearing both sides, this Court admitted the Appeal as it raises substantial questions of law, as more particularly set out in that order. This Court refused stay in respect of proceedings for partition. It was further directed that possession will not be handed over pending hearing and final disposal of the Appeal.

4. Mr. Arjunwadkar submitted that on 6.4.2010, Neminath Dadu Balwan, son of original defendant no.3, executed sale deed in favour of S/Shri Anil P. Balwan and Sanjay P. Balwan in respect of 0.45.5R, out of Gat No.1454/2, in all admeasuring 81R. On the same day,

Neminath Dadu Balwan executed sale deed in favour of applicant no.3 in respect of 0.40.5R out of Gat no.1454/2. Subsequently, S/Shri Anil and Sanjay P. Balwan executed sale deed in favour of applicant no.3 on 8.3.2011, whereunder they sold 0.40.5R which was purchased by them by sale deed dated 6.4.2010. He submitted that applicant no.3 has thus become owner of entire 81R. of Gat No.1454/2. Mr. Arjunwadkar submitted that respondent no.1 filed Civil Application No.990 of 2012 for vacating interim order passed on 18.6.1998. By order dated 11.9.2012 this Court granted relief against legal representatives of Dadu Balwan in terms of prayer clause (b) and further granted relief against appellant in terms of prayer clause (c) of the application. Mr. Arjunwadkar submitted that in paragraph 3 of the order, this Court noted that by registered sale deed dated 8.2.2010, legal representatives of deceased-appellant had sold some portion of Gat no.1454/2

by registered sale deed dated 8.2.2010 to one Sanjay P. Balwan and the remaining portion of Gat no.1454/2 was sold by registered sale deed dated 6.4.2010 to applicant no.3 herein. He submitted that though the applicant (respondent no.1 herein) was aware of the said transactions, he did not implead purchasers. Even that time, legal representatives of the deceased appellant Dadu Balwan were not brought on record.

5. He submitted that applicant no.3 herein took out Civil Application No.1171 of 2014 for impleading him as appellant in the Second Appeal. By order dated 21.11.2014 that application was allowed. He submitted that respondent no.1 is proceeding with Darkhast as the interim order was vacated by this Court on 11.9.2012. He, therefore, submitted that further proceedings of Regular Darkhast No.14 of 1998 may be stayed.

6. On the other hand, Mr Gaikwad submitted that applicants no.1 and 2

herein were heard by this Court while passing the order on 11.9.2012.

7. During the course of hearing, I suggested to Mr Arjunwadkar to consider filing Review Application seeking Review of the order dated 11.9.2012 as applicant no.3 was not impleaded in the Second Appeal as also was not heard at the time of passing of the order on 11.9.2012. After taking instructions from applicant no.3, he seeks permission to withdraw this application with liberty to take out appropriate application including for review of the order dated 11.9.2012.

8. In view thereof, on the motion made by Mr Arjunwadkar, the Application is allowed to be withdrawn with liberty as prayed for. It is expressly made clear that I have not examined merits of rival contentions. All contentions on merits are expressly kept open.

(R.G.KETKAR, J.)