

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

**CIVIL APPLICATION NO.1021 OF 2014
IN
SECOND APPEAL NO.450 OF 2014**

Smt. Bhagirathi Haribhau Yadav and ors. .. Applicants/
Appellants
(Org.Plaintiffs)

V/s

Dnyaneshwar Vishnu Kate and Ors. .. Respondents.
(Org.Defendants)

**AND
CIVIL APPLICATION NO. 170 OF 2015
IN
CIVIL APPLICATION NO.1021 OF 2014
IN
SECOND APPEAL NO.450 OF 2014**

R.N. Yadav @ Dhariya .. Applicant
(Org.Respondent No.10)

In the matter between

Smt. Bhagirathi Haribhau Yadav and ors. .. Applicants/
Appellants
(Org.Plaintiffs)

V/s

Dnyaneshwar Vishnu Kate and Ors. .. Respondents.
(Org.Defendants)

Mr. R.B. Raghuvanshi a/w Ratnesh Dube i/b Ms Rutuja

Ambekar, for Applicants.

Mr. S.G. Kudle, for Respondent No.10.

Mrs. Jyotsna Pandhi with Mr. P.S. Gujar, for Respondents No.21 to 25.

Mr. Rajan Pawar, AGP for Respondents No.26 and 27.

Coram : Smt. R.P SondurBaldota, J.

Date : 25th March, 2015

P.C.

1. This is a common order on the above two Civil Applications. Civil Application No.1021 of 2014 is taken out by the appellants for interim injunction to restrain respondent No.1 from dealing with or developing one of the suit properties i.e. the land at Survey No.119/2B of Pimple Saudagar, pending the disposal of the Second Appeal. Civil Application No.170 of 2015 is taken out by respondent No.10 for clarification that the ad-interim order dated 08th October, 2014 passed on the Civil Application of the appellants is no more in operation in view of the subsequent order dated 12th December, 2014. The other relief sought by respondent No.10 is to direct the appellants to file an undertaking in the form of bank guarantee to the effect that in the event respondent No.10 succeeds in the appeal, the appellants will compensate him for the losses

suffered on account of delay in the decision in the Second Appeal.

2. The Second Appeal arises out of the suit filed by the appellants for partition of the joint family properties. The appeal was admitted on 06th August, 2014 with observations that prima facie it appears that there was no reason for the Appellate Court to exclude properties at Survey No.119/2B and 18/7 from partition and separate possession. These two properties are claimed to have been purchased by respondent No.10 from respondent No.1 by the sale deed dated 09th June, 1983. The Lower Appellate Court has recorded a finding that the properties had been owned jointly by Vishnu, Laxman and Mahadev. Respondent No.1 is the son of Vishnu. In view of this factual position, the Second Appeal was admitted on the following substantial questions of law :-

1. Whether the appellate Court was right in excluding Survey No.119/2B and 18/7 from the partition and separate possession ?
2. Whether learned Counsel appearing for the Respondent No.10 waives service of the notice ?

3. It appears that during pendency of the proceedings, some portion of the properties came to be acquired by Government of

India. Therefore, by order dated 08th December, 2014, the appellants were directed to amend the Civil Application to implead the concerned parties. Accordingly, amendment was carried out and seven persons were impleaded to the Civil Application. They are (1) Union of India, (2) Director General, Defence Estate, (3) Principal Director, Defence Estate, (4) Defence Estate officer, Southern Command, (5) Commanding Officer, Southern Command, (6) State of Maharashtra and (7) The Collector of Pune.

4. The interim relief in operation during pendency of the suit was direction to respondent No.10 to maintain status-quo in respect of the properties at Survey No.119/2B and 18/7. This order has been continued with observation that if respondent No.10 is allowed to deal with the properties or carry out the construction, the same would lead to further complication which should be avoided.

5. Mr. Kudgle, the learned advocate for respondent No.10 submits that the order dated 23rd December, 2014 passed this Court, is no longer in operation since the same has not been specifically continued. He also submits that respondent No.10, who had purchased the properties as far back as in the year 1983 is unable to enjoy the properties purchased by him.

6. Considering the nature of the substantial questions of law framed, properties in question need to be preserved in the same condition during pendency of the Second Appeal. Hence, the Civil Application No.1021 of 2014 is allowed and Civil Application No.170 of 2015 is dismissed.

(Smt. R.P. SondurBaldota, J.)