

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 632 OF 1995

Shantaram Baburao Kamthe
(since deceased) through L.Rs.
Mandakini S. Kanrthe & Ors. .. Petitioners
VS.
Baburao Govindrao Kamthe & Ors. .. Respondents

Mr. Nitin P. Deshpande for Petitioners.
Mr. Ram Kunwar for Respondent Nos. 2 to 7 and 9.

CORAM : M. S. SONAK, J.
DATE: 24 APRIL 2015

P.C. :-

- 1] Heard the learned counsel for the parties.
- 2] This petition challenges order dated 15 December 1994 made by the 5th Additional District Judge, Pune, dismissing petitioners misc. civil appeal no. 361 of 1993.
- 3] The records in the present case would indicate that the respondents obtained decree dated 7 February 1990 in regular civil suit no. 442 of 1988 for eviction of the predecessor-in-title of the petitioners. The decree was confirmed in civil appeal no. 282 of 1990 on 23 August 1991.
- 4] The petitioners instituted regular civil suit no. 1712 of 1991 seeking setting aside of the aforesaid judgment and decrees dated

7 February 1990 and 23 August 1991, on the ground that they were made against the predecessor-in-title of the petitioners, who was in fact, a lunatic. This suit was dismissed for default on 5 February 1993. The petitioners applied for restoration. Pending restoration, the petitioners applied for a stay on the execution of the aforesaid judgment and decrees dated 7 February 1990 and 23 August 1991. Such application was rejected on 20 July 1993.

5] As against that order dated 20 July 1993, the petitioners instituted misc. civil appeal no. 361 of 1993, which has since been dismissed by the impugned order.

6] The impugned order, cannot be said to be vitiated by any jurisdictional error or perversity. The learned District Judge on basis of the material on record, has taken the view that the petitioners, could never have been regarded as tenants of the suit premises, as long as their predecessor-in-title, was living. Accordingly, the learned District Judge has held that the petitioners were not at all necessary or proper parties in civil suit no. 442 of 1988, in which the aforesaid decrees came to be made.

7] Mr. Deshpande, however contended that the application for restoration of petitioners civil suit no. 1712 of 1991 is still pending

and therefore, further execution of decrees in suit no. 442 of 1988 ought to be stayed until the same is decided, so that, the petitioners can seek appropriate interim reliefs in regular civil suit no. 1712 of 1991.

8] At this length of time, the aforesaid, would not be an appropriate mode to adopt. The respondents have a decree in their favour, which was made in the year 1990 and confirmed in the year 1991. Till date, the execution of the said decree has been stalled.

9] Accordingly, it would not be proper to grant any further indulgence to the petitioners, particularly in the absence of having made out any *prima facie* case entitling them to any relief in the matter of setting aside the decrees made in regular civil suit no. 442 of 1988. If, indeed, the civil suit no. 1712 of 1991 is restored and very decree made therein, the petitioners would always have the liberty to apply for restitution.

10] Accordingly, there is no reason to interfere with the impugned order. The petition is dismissed. There shall be no order as to costs.