

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 213 OF 2013

CIVIL APPLICATION (CAS) NO. 1058 & 1148 OF 2014

Pravin Vinayakrao Raut Vs. Chhabubai wd/o Santosh Meshram & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A. C. Dharmadhikari Adv for appellant.
Shri Nitin Lalwani Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: 06 JANUARY, 2015.

Present application has been moved by original plaintiff nos. 4 and 5 praying that the respondents be restrained from alienating the suit property and creating third party interest therein. Further prayer is made praying that the respondents be directed to render accounts as regards earnings from the suit property and deposit said amount in this Court.

In support of the application it is submitted that the first appellate Court allowed the appeal filed by the respondents and declared that Kh. No. 59 was a joint family

property in which the legal representatives of the plaintiff-Godru were entitled to half share. It is submitted that this part of the decree has not been challenged by the respondents. As the respondents are in possession of the suit property, they need to be restrained from alienating the same and also for rendering accounts as regards earnings there from.

Reply has been filed on behalf of the contesting respondents. The first prayer as regards alienation is not seriously objected. However, as regards the prayer for rendering accounts it is submitted that in the suit no relief for decree of damages or mesne profits have been prayed for. It is, therefore, submitted that said relief cannot be granted in absence of such relief not being sought in the suit.

As regards the prayer seeking to restrain the respondents from alienating the suit property, the same needs to be granted so as to avoid multiplicity of the proceedings. As regards the prayer for rendering accounts, it is clear that no relief for damages was prayed for in the suit. The relief to which the appellants would be found entitled in case they

succeed in the second appeal would be a subject matter of consideration while deciding the second appeal. Hence the direction seeking rendering of accounts cannot be granted. Accordingly, the following order is passed:

Civil application is allowed in terms of prayer clause (A) thereof. It is clarified that the rights of the appellants to seek appropriate relief as regards possession of the respondents during pendency of the proceedings shall be independently considered when the appeal is finally heard. Civil application is allowed in aforesaid terms and disposed of.

Civil Application No. 1148 of 2014: Prayer is to grant early hearing in the second appeal. Considering the pendency of the older matters, the relief as prayed for cannot be granted at this stage. It is open for the respondents to renew their request after six months. Civil application is disposed of accordingly.

JUDGE

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