

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Appeal from Order No.48 of 2015
With
Civil Application No.5947 of 2015**

* Shivaji s/o Chandrahas Todkari,
Age 58 years,
Occupation : Agriculture,
R/o Bamni,
Taluka & District Osmanabad. .. **Appellant.**

Versus

- 1) Chandrakant S/o Suresh Pawar,
Age 39 years,
Occupation: Agriculture,
R/o Bembli,
Taluka & District Osmanabad
(Abated).
- 2) Ramakant S/o Suresh Pawar,
Age 56 years,
Occupation: Agriculture,
R/o Bamni,
Taluka & District Osmanabad.
- 3) Sarubai W/o Pandurang Todkari,
Since died. .. **Respondents.**

Shri. Prashant Deshmukh, Advocate, for appellant.

With

Writ Petition No.4667 of 2015.

* Shivaji s/o Chandrahas Todkari,
Age 58 years,
Occupation : Agriculture,
R/o Bamni,
Taluka & District Osmanabad. .. **Petitioner.**

Versus

- 1) Sarubai W/o Pandurang Todkari,
(Since died) deleted.
- 2) Chandrakant s/o Suresh Pawar,
Died through his legal
representatives:
 - 2-A) Parwati w/o Suresh Pawar,
Age 54 years,
Occupation: Household,
R/o Behind Sudarshan Lodge,
Tuljapur, Taluka Tuljapur,
District Osmanabad.
 - 2-B) Poonam D/o Chandrakant Pawar,
Age 13 years,
Occupation: Education,
R/o As above.
 - 2-C) Divya D/o Chandrakant Pawar,
Age 10 years,
Occupation: Education,
R/o As above.

(R.Nos.2-B & 2-C are under
guardianship of grandmother
respondent No.2-A
Parwati W/o Suresh Pawar)
- 3) Ramakant S/o Suresh Pawar,
Age 56 years,
Occupation: agriculture,
R/o Bamni,
Taluka & District Osmanabad.

- 4) Khandu s/o Bharat Raut,
Age 27 years,
Occupation: Agriculture,
R/o Agad Galli, Osmanabad
Taluka & District Osmanabad.
- 5) Shivaji s/o Gundiba Katwate,
Age 66 years,
Occupation: Agriculture,
R/o Bembli,
Taluka & District Osmanabad. ... **Respondents.**

Shri. Prashant Deshmukh, Advocate, for petitioner.

Respondent No.1 - deleted.

Respondent Nos.2-A to 2-C, 3 to 5 - served.

Shri. V.S. Tanwade, Advocate, for respondent Nos.4 & 5.

CORAM: T.V. NALAWADE, J.

DATE : 8th FEBRUARY 2016

JUDGMENT:

- 1) The appeal is filed to challenge the order made on Exhibit 5 in Regular Civil Appeal No.20 of 2015 by District Judge-1 Osmanabad. Writ petition is filed to challenge the order made on Exhibit 5 in Regular Civil Appeal No.21 of 2015 by the same learned Judge of the District Court. Both the sides are heard.

2) Regular Civil Suit No.79 of 2002 was filed by one Sarubai for relief of injunction and for alternate relief of possession of disputed property, portion of 3 hectares 12 R from Gat No.291 situated at village Bamni, Tahsil and District Osmanabad. Regular Civil Suit No.202 of 2002 was filed for relief of perpetual injunction in respect of same property by present appellant, petitioner. Sarubai is widow of Pandurang and present appellant, petitioner is the successor of Ganpati, a brother of Pandurang. After the death of Pandurang, the appellant had filed Civil Suit No.288 of 1996 for declaration of ownership in respect of suit land on the basis of a will allegedly executed by Pandurang. The appellant failed in the said suit and appeal filed against the judgment and decree of trial Court was also dismissed. Said decision has become final. Sarubai then sold this property to other plaintiffs of Civil Suit No.79 of 2002. Both the suits filed for possession by Sarubai and the suit filed for injunction by successors of Ganpati were decided together and the decree of possession is given in favour of Sarubai. Regular Civil Appeal No.21 of 2015 is filed to challenge the judgment and decree of possession and Regular Civil Appeal No.20

of 2015 is filed to challenge the judgment and decree of suit filed for injunction. In both the matters, the aforesaid applications at exhibit 5 were filed for getting stay to the execution of the decree of possession given in favour of Sarubai. The District Court has rejected the applications by holding that in previous litigation all the issues were decided and the decision has become final and present appellant is trying to protract the execution of the decree. Learned counsel for the appellant submitted that the appellant has been in possession of the suit property for more than 20 years and so it needs to be presumed that he has become owner due to adverse possession and his possession needs to be protected.

3) The aforesaid defence is considered in the suit itself. Further, it can be said that in view of nature of contentions made in the previous suits, the suit filed on the basis of will against widow of Pandurang there is virtually no force in the contention that possession of the present defendant was adverse in nature. In view of these circumstances, the District Court has refused stay to the execution of the possession decree.

4) Learned counsel for the appellant placed reliance on the case reported as **AIR 2004 SC 4261 (Ramaiah v. N. Narayana Reddy)** in which there is discussion about Articles 64, 65 and Section 14 of the Limitation Act. It needs to be kept in mind that suit of Sarubai was on the basis of title and it was not on the basis of cause of action like losing the possession. Considering the relationship between Sarubai and the present appellant and the aforesaid circumstances, the reported case cannot help the present appellant. Thus, there are no merits in the present proceedings. It is nothing but tactics played by the party in possession to avoid delivery of possession. The parties are litigating for more than 20 years and there are aforesaid circumstances. In the result, following order:-

5) The appeal and the writ petition are dismissed. Protection of one month is granted subject to deposit of Rs. One lakh within one month from today as security in appeal. Civil application is disposed of.

Sd/-
(**T.V. NALAWADE, J.)**

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