

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

*CIVIL APPLICATION NO. 1056 OF 2015
IN
SECOND APPEAL NO. 492 OF 2015*

Purushottam Vasant Vathare
(Deceased Through legal heirs)

1 a. Mrs.Pradnya Jayant Deshpande & ors. ... Applicants

V/s.

Ramu Kashinath Kadam
(Deceased Through his legal heirs)

1 a. Sarubai Ramu Kadam
(Deceased through her legal heirs)
1 b. Sarjerao Ramu Kadam & ors. ... Respondents.

*ALONG WITH
CIVIL APPLICATION NO. 557 OF 2016
IN
SECOND APPEAL NO. 492 OF 2015*

Ramu Kashinath Kadam
(Deceased Through his legal heirs)

1 a. Sarubai Ramu Kadam
(Deceased through her legal heirs)
1 b. Sarjerao Ramu Kadam & ors. ... Applicants

V/s.

Purushottam Vasant Vathare
(Deceased Through legal heirs)

1 a. Mrs.Pradnya Jayant Deshpande & ors. ... Respondents.

Mr.Uday Warunjikar along with Bhushan Deshmukh and M.U.Rajput for the Applicants in C.A. No.1056 of 2015.

Mr.V.B.Konde-Deshmukh a/w Mr.Prashant Patil, Applicants in C.A. No. 557 of 2016.

Coram : N.M. Jamdar, J.

Dated : 26 April, 2016.

P.C. :

In Civil Application No.1056 of 2015, at the time of issuance of notice on 6 July 2015, this Court had granted stay to the decree of the Trial Court. Civil Application No.557 of 2016 is taken out by the Respondents with a prayer that the order of stay passed in Civil Application No.1056 of 2015 be recalled.

2 Both applications were heard together from time to time. When the judgment and decree of the Trial Court was challenged, during the first appeal, there was no stay to the decree, however, the Appellate Court had granted an order of status-quo. The Respondents' claim right in the suit property as tenant. It is the case of the appellants that the statutory purchase did not take place and the possession of the property was received by the predecessor of the Appellant. Reliance was placed on possession receipt, which possession receipt was not brought on record. It was the contention of the Appellants that since the Respondent contended that the possession receipt is bogus, the factum of possession receipt is accepted. This submission is not correct. The Respondents was tenant in the suit property and it is for the Appellant to show how

Appellants came back in possession. Time was granted to the parties to bring on record 7/12 extracts of the relevant times to ascertain whether the possession receipt referred to. No such documents are placed on record. I am not inclined to continue the order of stay of injunction as there was no such order in the first appellate proceedings and that there is no cogent evidence that the possession was given to the predecessor of the Appellant by the Respondents who claim right as statutory claimant. When the order of stay of the decree of the Trial Court was passed in the civil application, the Respondents, who had filed a caveat, were not given a notice. Furthermore, the learned counsel for the Appellants made a statement that he has received telephonic instructions that the Appellants have sold the property to some third party on 13 April 2016. When the appeal and civil applications were being argued, without seeking leave of the Court, the Appellant has sold the property. In the circumstances, the ad-interim relief granted on 6 July 2015, stands vacated.

3 Civil Application No.1056 of 2015 as well as Civil Application No.557 of 2016 are disposed of in above terms.

(N.M. Jamdar, J.)