

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

**CIVIL APPLICATION NO.785 OF 2015
IN
SECOND APPEAL NO.331 OF 2015**

Namdev Nivrutti Ranawade (deceased)
Sou.Phulbai Jayawant Parge & Ors. .. Applicants

In the matter between

Namdev Nivrutti Ranawade (deceased)
Sou.Phulbai Jayawant Parge & Ors. .. Appellants
Vs.
Vilas Baburao Sonawane & Anr. .. Respondents

Mr.S. G. Deshmukh i/by Mr.Ramdas Shelke for the applicants/appellants.
Mr.Prathamesh Bhargude for the respondent no.1.
Mr.Tushar Pimple for the respondent no.2.

CORAM : R.D. DHANUKA, J.
DATE : 2nd March 2016

P.C.

. By this civil application, the applicants (original defendants in Suit and the appellants in Second Appeal No.331 of 2015) seek injunction against the respondent no.1 restraining him from disturbing possession of the applicants over the suit property.

2. This Court has already admitted the second appeal filed by the applicants herein on 13th January 2016. This Court has also passed a separate order dated 13th January 2016 in Civil Application No.784 of 2015 thereby recording the statement made by both the parties that they would not create third party rights in respect of the suit property during the pendency of the second appeal. This Court also recorded the

statement made by the respondents that during the pendency of the second appeal, the respondents would not apply for execution of the decree and has disposed of the said civil application.

3. The respondent no.1 (original plaintiff) has filed a suit for specific performance against the applicants herein which was dismissed by the trial Court. The appeal is preferred against the said order. The Lower Appellate Court has allowed the said appeal. The present second appeal has been filed by the original defendants impugning the said order.

4. Mr.Deshmukh, learned counsel appearing for the applicants (original defendants) invited my attention to the agreement entered into between the parties and several other documents which are forming part of the compilation. It is submitted that admittedly, in the agreement entered into between the parties, it was specifically provided that the agreement in respect of the suit property was without handing over the possession. He submits that in the suit for specific performance, there was no averment made by the original plaintiff alleging his possession and there was no prayer for possession of the suit property. He also invited my attention to the findings recorded by the learned trial Judge that the property was being enjoyed by the original defendants. He submits that the Appeal Court though allowed the appeal filed by the original plaintiff has not rendered any finding on the issue of possession. My attention is invited to the 7/12 extract in support of the submission that the applicants herein are in exclusive occupation and possession of the suit property and have been cultivating the sugarcane crops and supplying it to various sugar factories.

5. My attention is also invited to the Will Deed of Hirabai Ranawade which was propounded by the original plaintiff which was executed in the year 2005 in which Hirabai Ranawade was claiming possession of the suit property.

6. Learned counsel appearing for the original plaintiff, on the other hand, invited my attention to the order passed by the Maharashtra State Co-operative Appellate Court in Appeal No.246 of 1998 which was filed by the original plaintiff against Hirabai Ranawade. The Maharashtra State Co-operative Appellate Court passed an order in terms of the compromise terms entered into between the parties by which the respondent nos.1 and 2 therein declared that the property involved in the dispute had been agreed to be purchased by the original plaintiff and that the respondents had agreed to sell the said property to the original plaintiff for a lumpsum consideration of Rs.4,92,000/- and out of which the original plaintiff had already paid Rs.2,31,000/- to the respondent nos.1 and 2. It is also recorded that the respondent nos.1 and 2 thereto had already handed over possession of the suit property to the original plaintiff on 29th January 1996 by executing a possession receipt of even date in his favour.

7. My attention is also invited to compromise pursis filed by the parties in the said Appeal No.246 of 1998 which was duly signed by all the parties including their respective advocates. Even in the said compromise pursis, the parties recorded that the original plaintiff was in possession of the suit property and the original defendants were not entitled to raise any dispute, even in future regarding the sugarcane crops or any other crops. The parties also recorded in the said

compromise pursis that they had executed a possession receipt dated 29th January 1996.

8. My attention is invited to the possession receipt at page 74 of the affidavit-in-reply filed in the Civil Application No.785 of 2015 which was filed by the applicants herein. Learned counsel for the original plaintiff also invited my attention to the order passed by this Court in Civil Application No.988 of 2014 in Second Appeal No.439 of 2014 which was filed by the applicants herein.

9. A perusal of the said order dated 15th September 2014 clearly indicates that this Court took a cognizance of the order passed by the Maharashtra State Co-operative Appellate Court in the ancillary proceedings in which the possession of the original plaintiff was confirmed. This Court also took a view that except Rs.21,000/-, the original plaintiff had already paid the entire consideration long back to the original defendants. By the said order, this Court directed that the original plaintiff shall remain in possession of the suit property and the original defendants shall not disturb his possession till the decision in the Regular Civil Appeal No.187 of 2012 by the learned District Judge was rendered after the said remand order.

10. It was not the case of the original defendants that during the pendency of the proceedings before the Lower Appellate Court, the original plaintiff had been dispossessed by the original defendants or that the possession was handed over by the original plaintiff to the original defendants.

11. My attention is also invited to the order passed by the Executing Court on 2nd May 2015 below Exhibit-36 in Special Darkhast No.9 of 2014 which was filed by the original plaintiff inter alia praying for a direction to local police station to provide for police aid.

12. A perusal of the said order passed by the Executing Court clearly indicates that the Executing Court has also taken cognizance of the order passed by this Court in the Civil Application No.988 of 2014 in Second Appeal No.439 of 2014 which application was filed by Mr.Sopan V. Ranawade. In that order, it was held that the respondent no.1 (original plaintiff) shall remain in possession of the suit property and the original defendants shall not disturb his possession till the decision is passed in Regular Civil Appeal No.187 of 2012. The Executing Court also directed to provide police aid to the original plaintiff for completion of cutting work of sugarcane crop standing in the suit property.

13. In so far as the submission of the learned counsel for the original defendants that there was no clause in the agreement that the possession was handed over or that there was no averment in the plaint regarding possession of the suit property is concerned, it is a specific case of the original plaintiff that in the plaint itself, he had produced a copy of the compromise pursis and the order passed by the Maharashtra State Co-operative Appellate Court which were forming part of the record before the learned trial Judge.

14. In so far as the alleged Will of Hirabai Ranawade relied upon by the learned counsel for the original defendants is concerned, the said writing was not relied upon by the original defendants before the Lower

Appellate Court and in any event, in view of the order passed by this Court and by the Executing Court, the said writing is of no relevance.

15. A perusal of the record clearly shows that this Court while considering the second appeal earlier filed by the applicants herein has considered the compromise pursis and the order passed by the Maharashtra State Co-operative Appellate Court and has passed a specific order that the original plaintiff shall remain in possession and his possession shall not be disturbed by the original defendants. It is not the case of the original defendants that after remand by this Court, the original plaintiff has handed over possession of the suit property to the original defendants or that the original defendants came in possession despite the order passed by this Court.

16. A perusal of the record further indicates that the original plaintiff has also supplied sugarcane crops who was cultivating on the suit lands till recently. In my prima facie view, the applicants herein (original defendants) thus have not made out a case of their alleged possession in respect of the suit property and thus no relief as prayed in the civil application can be granted. I am respectfully bound by the early order passed by this Court in the earlier second appeal filed by the applicants herein.

17. Civil Application is dismissed. No order as to costs.

R.D. DHANUKA, J.