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

***WRIT PETITION (ST.) NO. 24309 OF 2016
with
CIVIL APPLICATION (ST.) NO. 26067 OF 2016***

Sopan Baburao Vidhate.

...Petitioner/Applicant.

V/s.

Kasabai Bapu Sawant (since deceased)
through legal heirs & Ors.

... Respondents.

Mr. P.B. Shah i/b. Shah K.P. for the Petitioner/Applicant.

Mr. R.V. Bansode a/w. S.R. Bhise for Respondents 3,4,5,7(a),7(c) and
11(a).

CORAM : N.M. Jamdar, J.

04 October, 2016.

Oral Order :-

By this Petitioner the Petitioner challenges the order passed by the learned District Judge, Vaduj dated 8 August 2016 below Exhibit 47 and Regular Civil Appeal No. 483 of 2010.

2. The proceedings arise from a suit which was instituted by the Respondents in the year 1992. The suit was decided in the

year 2010. The Petitioner was Defendant No.10 in the said suit. After the decree was passed, the Petitioner filed an Appeal No. 483 of 2010 in the Court of District Judge, Vaduj with an application for condonation of delay. The application for condonation of delay came to be allowed on 30 October 2009. Thereafter, the proceedings were transferred to the Court in Vaduj. Thereafter, the Respondent – Plaintiff sought to press for the execution proceedings and application for interim relief was filed in the appeal by the Petitioner, which was rejected by the impugned order.

3. The learned Counsel for the Petitioner sought to contend that the Petitioner was not served with the suit summons, and he was not informed that there is a suit pending and therefore, having once condoned the delay in filing the appeal, the Petitioner's possession be protected during the pendency of the suit. He submitted that if the stay is not granted, the Petitioner will lose possession and he has substantially invested in the suit property. The prayer is opposed by the learned Counsel for the Respondents contending that the Petitioner was Defendant No.10 in the suit and has purchased the disputed property from the other defendant – i.e. Sopan, after appearing in the suit and is bound by the decree and that the Petitioner is not a bonafide purchaser.

4. The learned District Judge has taken note of the fact that the Petitioner purchased the property in question during the pendency of the suit at his own risk and the Plaintiff who has been avoiding the relief from the year 1993, cannot be deprived in this fashion. The learned District Judge was not in error in taking this view. It is not possible to believe that the Petitioner, who is residing in the same village, who is arrayed as Defendant No.10 and who purchased the property from another Defendant would not even have knowledge of the pendency of the suit. The learned Counsel for the Petitioner has sought to rely upon the evidence of his vendor that is another Defendant in the suit. The evidence of this vendor has little value as rightly contended by the learned Counsel for the Respondent. This Defendant and the Petitioner have in this fashion are seeking to deprive the Respondent – Plaintiff of the fruits of the decree. In my opinion, it cannot be said that the Petitioner is a bona-fide purchaser and the theory of fraud and the version that from 1996 till the year 2007, the Petitioner will not even know that the suit is filed decreed cannot be believed. When the Petitioner purchased the property from the co-defendant, neither any leave from the Court was sought nor any public notice was given.

5. In the circumstances, prima-facie the whole attempt of the Petitioner is to somehow deprive the Respondent – Plaintiff of his rightful claim to the property, however at the same time it cannot

be lost sight of that substantive appeal filed by the Petitioner is pending. Considering this position, I am of the opinion that the equities can be balanced by directing the learned Civil Judge, Vaduj to appoint a suitable officer of the Court as a Court Receiver, who will take possession of the suit property and place the Petitioner in possession as an agent of the Court Receiver and upon usual agreements and documentation. The learned Civil Judge will fix the royalty to be paid by the Petitioner based on usual parameters and direct the Petitioner to deposit the royalty in the Court. The learned Civil Judge will also specify the default clause if the royalty is not paid by the Petitioner. The learned Civil Judge is directed to initiate this exercise as early as possible, preferably within period of two weeks from today. The learned District Judge will make an endeavour to dispose off the appeal considering the fact that the suit is of the year 1992, preferably within period of six months from the date writ of this Court reaches it. The appointment of the Receiver and the urgency as above shall operate as an interim order in the Appeal.

7. The Writ Petition is disposed of in above terms. Civil Application does not survive in view of the disposal of the Petition.

(N.M. Jamdar, J.)