

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 1117 OF 2015  
WITH  
CIVIL APPLICATION NO. 1388 OF 2015 IN A.O. NO. 1117 OF 2015**

Smt. Yesubai Bandhu Patil ... Appellant/Applicant  
Vs.  
Rajaram Sitaram Patil & Ors. ... Respondents

**WITH  
APPEAL FROM ORDER NO. 1150 OF 2015  
WITH  
CIVIL APPLICATION NO. 1438 OF 2015 IN A.O. NO. 1150 OF 2015**

Mrs. Laxmibai Bandhu Patil & Anr. ... Appellants/Applicants  
Vs.  
Rajaram Sitaram Patil & Ors. ... Respondents

Mr. Kailas Dewal h/f. Mr. J.M. Joshi, Advocate for the appellant/applicant in A.O. No. 1117/2015.

Mr. Sunil Kumar i/b/ M/s. Kumar & Associates, Advocate for the appellants/applicants in A.O. No. 1150/2015.

Mr. G.S. Godbole a/w. Mr. Sumit Kothari, Mr. Parag Tilak, Advocate for respondent nos. 1 and 2.

**CORAM: MRS.MRIDULA BHATKAR, J.  
DATE: 16<sup>th</sup> February, 2016.**

**P.C.:**

Admit. The learned counsel for the respondents waives service. By consent, these two Appeals are heard finally and decided at the stage of admission.

2. These two Appeals are directed against the order dated 28<sup>th</sup> September, 2015 passed by the learned District Judge-3, Kalyan rejecting

the Application for temporary injunction filed by the Appellants, who are original plaintiffs, in Civil Appeal No. 43 of 2015 (Exhibit 7). The appellants/plaintiffs are two sisters, who had filed the suit for declaration and injunction in respect of suit property and also in respect of will dated 24<sup>th</sup> November, 1968 executed by their grandfather Kalu Dhone that the said will is fabricated by defendant no. 1 and defendant nos. 2 and 3 are not bonafide purchasers of the suit property. The suit land was a tenancy land. One month after executing the said will, Kalu Dhonde died on 24<sup>th</sup> December, 1968 and the tenancy certificate under section 32M was issued on 1<sup>st</sup> April, 1971. It is the case of the plaintiffs that the suit land by will allegedly bequeathed by their father in the name of respondent no. 1/original defendant no. 1 and, therefore, on the basis of that will, his name was entered in the revenue record. Thereafter, as per the case of the appellants, on the basis of the said fabricated will, respondent no. 1 transferred the development rights in the said property in favour of respondent no. 2. Therefore, these two plaintiffs filed Regular Civil Suit No. 195 of 2006 for declaration and injunction on 12<sup>th</sup> May, 2006. It is the case of the appellants that on 1<sup>st</sup> August, 2007, their application for interim injunction was heard and decided on merit and the order of temporary injunction that defendant nos. 1 and 2 shall not create any third party interest in the suit property was passed. The said order continued till 29<sup>th</sup>

April, 2015. On that date, the suit was dismissed and the Appeal was preferred on 8<sup>th</sup> June, 2015. After filing the appeal, the said interim order of injunction continued. In Appeal, the Application (Exhibit 7) for continuation of interim injunction was preferred and the said application was dismissed by impugned order dated 28<sup>th</sup> September, 2015. Hence, the appellants have filed these Appeals.

3. The main contention of the learned counsel for the appellants that when interim order was in continuation from 2007 till today, the Appellate Court ought to have considered the Appeals on merits finally and the same order would have been continued till pendency of the Appeals. The learned counsel submitted that the appellants have challenged the genuineness of the will on various counts and that issue is required to be decided.

4. Per contra, while opposing these Appeals, the learned counsel for the respondent has submitted that the suit wherein the genuineness of the will is challenged was dismissed and the specific issue framed by the trial Court in respect of validity of the will is decided against the plaintiffs. He submitted that defendant no. 1 is also grandson of Kalu Dhone, i.e., son of Savitribai, who is daughter of Kalu Dhone. He further submitted that from 1968 the appellants did not take steps to enter their names in the revenue

record though the name of respondent no. 1 is entered in the revenue record in the year 1971, which is also considered by the trial Court and also by the Appellate Court while dismissing the Application for temporary injunction. He submitted that the Appellate Court has also taken a note that present plaintiffs have arrived at compromise with another third person regarding the remaining property inherited by them from Kalu Donde, which is also a part of the will. Thus, it shows that at one time, they are accepting the will and taking the benefit of the will. He further submitted that they are trying to extort money from respondent no. 1 and hence, the order passed by the District Court is to be maintained.

5. After hearing both the parties, it appears that the parties are at issue in respect of genuineness of the will. The status of respondent no. 1 as grandson is also challenged. This issue can be decided only after going through the evidence tendered by the parties. The order of temporary injunction was in force from 1<sup>st</sup> August, 2007 till today. On query, it is found that though the development rights are transferred by respondent no. 1 to respondent no. 2, no development has taken place on the suit land. Under such circumstances, I think that following order will meet the ends of justice.

- (i) Appeals from Order are partly allowed.
- (ii) The order of District Court is hereby set aside.

- (iii) The learned District Judge to endeavour to decide the Appeals on or before 31<sup>st</sup> December, 2016.
- (iv) The interim protection which is granted by the order dated 1<sup>st</sup> August, 2007 to continue till the decision of the Appeal before the District Court subject to following terms-
  - (a) The respondents are restrained from creating any third party right in any manner and they shall not part with the possession of the suit property and shall not create any encumbrance.
  - (b) Respondent nos. 1 and 2 are allowed to take steps in respect of sanctioning of the plan and other formalities from the competent authorities, pending Appeal.
  - (c) The appellants may carry out construction work thereafter upto plinth only which is subject to outcome of the Appeal.

6. Both the Appeals are disposed of. In view of this, Civil Applications do not survive and the same are accordingly disposed of.

**(MRIDULA BHATKAR, J.)**