

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12825 OF 2016

WITH

WRIT PETITION NO.12831 OF 2016

Kamalabai Laxman Damodar and others ... Petitioners

Vs.

Kailas Mahadev Sasane ... Respondent

Mr. S. M. Gorwadkar, Senior Advocate a/w. Mr. Vivek V. Salunke for Petitioners.

Mr. Sanjiv A. Sawant a/w. Mr. Himanshu Kode i/b. Mr. R. R. Nair for Respondent.

CORAM : R. G. KETKAR, J.

DATE : DECEMBER 13, 2016

P.C. :

Heard Mr. Gorwadkar, learned Senior Counsel for petitioners and Mr. Sawant, learned Counsel for respondent at length in both the Petitions at length. Rule. Mr. Sawant waives service for respondent in both the Petitions. At the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

2. Writ Petition No.12825 of 2016 is preferred by the original defendants challenging the order dated 20.10.2016 passed by the learned District Judge. By that order, the learned District Judge rejected the application exhibit-21 taken out by the defendants in Regular Civil Suit No.562 of 2014.

3. Writ Petition No.12831 of 2016 is preferred by the defendants challenging the judgment and order dated 20.10.2016 passed by the learned District Judge. By that order, the learned District Judge allowed the appeal preferred by the plaintiff and quashed and set aside the

judgment and order dated 13.11.2014 below exhibit-5 and allowed application exhibit-5. The operative part of the order of the learned District Judge reads thus,

- “1. Misc. Civil Appeal No.126/2014 and Misc. Civil Appeal No.127/2014 are allowed.
2. Order dated 13-11-2014 passed by 8th Joint Civil Judge, J.D., Nashik at Exh.5 and 21 in R.C.S.No.562/2014 is set aside.
3. Application filed by the plaintiff at Exh.5 is allowed.
4. Application filed by the defendants at Exh.21 is rejected.
5. The defendants, their servants, agents and persons claiming through them are restrained from disturbing the possession of the plaintiff and from erecting compound wall on the suit property, as per rules.
6. Since the respondent No.1 is a senior citizen, the trial be expedited.
7. A copy of this judgment be kept in Misc. Civil Appeal No.127/2014.
8. R & P be sent to T.C. ”

4. Learned Counsel appearing for the parties submit that parties are present in the Court. Upon taking instructions from them, they submit that the orders passed by the learned trial Judge below exhibits-5 and 21 as also the order passed by the learned District Judge in Miscellaneous Civil Appeals No.126 of 2014 and 127 of 2014 may be set aside by consent of the parties. Applications at exhibits-5 and 21 may be restored to the file of the learned trial Judge and the parties may be permitted to file additional documents, which are not filed earlier. Learned Counsel for the parties further submit that as and by way of ad-interim order, defendants may be restrained from disturbing possession of the plaintiff and the plaintiff may be directed not to erect compound wall on the suit property during the pendency of the applications at exhibits-5 and 21. Learned Counsel appearing for the parties state that parties will appear before the trial Court on 19.12.2016 and for that purpose, no fresh notice be issued to them.

5. In view thereof, by consent of the parties, Petitions are disposed of in the following terms:

a. (i) order dated 20.10.2016 passed by the learned District Judge rejecting the application exhibit-21 taken out by the defendants as also (ii) order dated 20.10.2016 passed by the learned District Judge allowing the appeal preferred by the plaintiff and quashing and setting aside the judgment and order dated 13.11.2014 below exhibit-5 and allowing application exhibit-5 in Regular Civil Suit No.562 of 2014, are quashed and set aside;

b. Applications at exhibits-5 and 21 filed in Regular Civil Suit No.562 of 2014 are restored to the file of the trial Court;

c. Parties are at liberty to file additional documents in support of their respective case;

d. By way of ad-interim relief, defendants are restrained from disturbing possession of the plaintiff. Plaintiff shall not erect the compound wall on the suit property till the disposal of exhibits-5 and 21;

e. Parties will appear before the trial Court on 19.12.2016 and for that purpose, no fresh notice be issued to them;

f. The learned trial Judge is requested to decide applications exhibits 5 and 21 as expeditiously as possible and preferably within 4 weeks from the date of appearance of the parties;

g. Grant of ad-interim order shall not be construed as an expression of merits either way;

h. All contentions of the parties are expressly kept open;

i. The learned trial Judge will decide the application, uninfluenced by the observations made in this order.

j. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)