

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
CRIMINAL APPLICATION NO.540 OF 2017

- 01 Revansiddh Mahadevayya Hiremath,  
age: 40 years, Occ: service/social  
work, R/o Bardapur, Tq. Ambajogai,  
District Beed.
- 02 Rudramani Mahadevayya Hiremath,  
age: 36 years, Occ: and r/o as above.
- 03 Satish Raosaheb Madne,  
age: 40 years, Occ: Business,  
R/o Fardapur Village, Tq.Renapur,  
District Latur.
- 04 Kerba Bhimrao Suryawanshi  
(Baban Bhimrao Survase),  
age: 42 years, Occ: Labour,  
R/o Bardapur, Tq. Ambajogai,  
District Beed.
- 05 Ramling Shivdas Chaudhari,  
(Ram Shivdas Chaudhari),  
age: 38 years, Occ: Business,  
R/o Mangalwar Peth, Ambajogai.
- 06 Kailash Pralhad Karpude,  
age: 40 years, Occ: Driver,  
R/o Bardapur, Tq.Ambajogai.
- 07 Shrihari Nagorao Suryawanshi,  
(Shrihari Nagorao Survase),  
age: 45 years, Occ: Agril.,  
R/o as above.

Petitioners

Versus

- 01 The State of Maharashtra,  
through Police Station,  
Bardapur, Tq. Ambajogai,  
District Beed.

02 Sachin Jagannath Agrawal,  
age: 32 years, Occ: service,  
R/o Bardapur, now at Janta Lodge,  
Prashant Nagar, Ambajogai,  
District Beed.

Respondents

Mr.V.V.Bhavthankar, advocate for applicants.  
Mr.S.R.Yadav Lonikar, A.P.P. for Respondent No.1.  
Mr.S.S.Thombre, advocate for Respondent No.2.

**CORAM : R.M.BORDE AND  
A.M.DHAVAL, JJ.  
DATE : 06<sup>th</sup> July, 2017.**

**ORAL JUDGMENT (Per R.M.Borde, J.) :**

1            Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2            The applicants are praying to quash criminal proceedings initiated against them in pursuance to lodging of First Information Report bearing Crime No.06/2017, registered with Police Station Bardapur, Tq. Ambajogai, District Beed, for the offences punishable under Sections 395, 506 read with Section 34 of the Indian Penal Code.

3            It is alleged in the First Information Report lodged by Respondent No.2-complainant that the applicants are instrumental in taking away 54 bags of *soyabeen* and live stock. The allegations recorded in the First Information Report need not be reproduced in detail. The proceeding initiated deserves to be quashed since those arise out of civil disputes pending between the parties and in those civil proceedings a categorical finding has been recorded in respect of physical possession of *Shri Guru Mahaling Swami Math*,

*Bardapur.*

4 Applicants are the persons connected with aforesaid Math. It is contended by the applicants that an agreement to sell was executed by father of Respondent No.2 on 29.06.1990 agreeing to sell the agricultural property belonging to him in favour of the Trust. The possession of the property was handed over at the time of execution of registered agreement to sell.

5 It is further pointed out that since father of Respondent No.2 failed to execute sale deed, a suit bearing R.C.S. No.24/2000 was instituted by the Trust against father of respondent no.2 claiming specific performance of contract. The suit was contested by father of respondent no.2 and issue in respect of possession of the Trust was framed and a categorical finding has been recorded by the Civil Court that the Trust has been handed over possession of the property at the time of execution of registered agreement to sell. The Civil Court, however, partly decreed the suit and granted decree of refund of earnest money in favour of the Trust by judgment and decree dated 07.10.2006 instead of granting decree of specific performance of contract.

6 Two separate appeals were preferred by the Trust as well as by the father of respondent no.2 challenging judgment and decree passed by the trial Court. The appeal preferred by the Trust bearing R.C.A. No.83/2006 came to be allowed, whereas, appeal presented by father of respondent no.2 bearing R.C.A. No.82/2006, came to be dismissed. The first appellate court

granted decree of specific performance of contract in favour of the Trust, whereas, appeal presented by the father of respondent no.2 came to be dismissed. It is informed that there are two Second Appeals presented by father of respondent no.2, however, those appeals have not yet been admitted.

7           It is also pointed out that in the mean time, heirs of respondent no.2 instituted a suit bearing R.C.S. No.138/99 claiming decree of partition of agricultural property including the properties sold in favour of the Trust. Surprisingly, in the suit presented by heirs of father of respondent no.2, claiming decree of partition, father of respondent no.2 remained absent and the suit proceeded *ex parte* against him. The trial Court decreed the suit and declared that the registered document of agreement to sell is not binding on the rights of the plaintiffs. It is informed that an appeal has been preferred by the Trust challenging decree of the trial Court, being R.C.A. No.63/2007. The appeal has already been decided on 01.10.2006 and a decree of possession of the suit property has been awarded by the first trial Court. The Trust has been directed to hand over possession of the suit property to the plaintiffs within two months from the date of decree. It is informed that against said judgment and decree passed by the appellate Court in R.C.A. No.63/2007, a Second Appeal has been presented by the Trust and same is stated to be pending. While dealing with Civil Application No.15425/2016 in S.A. No.813/2016 presented by the Trust, the learned Single Judge has observed that, "in the circumstances, possession, if not already taken by following due process of law, would not be delivered to decree holder or person claiming through them. There is no dispute that no proceeding for

execution has been initiated by the decree holder, as such, question of delivery of possession does not arise.

8           In the circumstances, it is more than clear that grievance raised by the complainant in the complaint is predominantly of civil nature since there are various litigations pending between the parties before the Civil Court in respect of entitlement of the parties in relation to the suit property. The complaint lodged by the complainant is an outcome of civil dispute pending between the parties. Apart from this, it is clear on *prima facie* consideration of the judgments delivered in various proceedings, by the Civil Courts that the Trust appears to be in possession of the property and is cultivating the property since the date of execution of agreement to sell and possession of the property has not been taken over by the complainant or any other person in observance of due procedure prescribed in law.

9           In this view of the matter, criminal proceeding initiated by respondent no.2 against applicants, being Crime No.06/2017, registered with Police Station Bardapur, Tq. Ambajogai, District Beed, for the offences punishable under Sections 395, 506 read with Section 34 of the Indian Penal Code, deserves to be quashed and same is accordingly quashed.

10           Rule is made absolute to the extent above.

**A.M.DHAVALÉ**  
**JUDGE**

adb/crapln54017

**R.M.BORDE**  
**JUDGE**