

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISC. CIVIL APPLICATION NO. 27 OF 2017

1. Ramdas Shankarrao Dhumal
Age : 66 Yrs., Occ. Agril.,
R/o : Mamdapur, Tq. Rahata,
Dist. Ahmednagar.
2. Mrs. Aruna Ramdas Dhumal
Age : 61 Yrs., Occ. Agril.,
R/o : Mamdapur, Tq. Rahata,
Dist. Ahmednagar.

..... APPLICANTS

V E R S U S

1. Ajay Shankarrao Dhumal
Age : 59 Yrs., Occ. Agri.
& Business, R/o : Goregaon
(East), Mumbai.
2. Mrs. Surekha Ajay Dhumal
Age : 52 Yrs., Occ. Household,
R/o : Goregaon (East),
Mumbai Thr. G.P.A.
Gajanan Shankarrao Dhumal
Age : 74 Yrs., Occ. Agri.,
R/o : Kolhar, Tq. Rahata,
Dist.: Ahmednagar.

..... RESPONDENTS

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Mrs. A.N.Ansari, Advocate for Applicants.

Mr. G.G.Deshpande, Advocate for Respondents.

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CORAM : SUNIL P. DESHMUKH, J.

DATE OF JUDGMENT : 14th FEBRUARY, 2017

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ORAL JUDGMENT :

1. Heard the learned counsel for the parties.
2. Present miscellaneous civil application has been moved purporting be u/s 24 of the code of civil procedure seeking transfer of Regular Civil Appeal No. 40/2016 from the court of District Judge-2 to the court of some other district judge.
3. Learned counsel for the applicants states that applicants were defendants in R.C.S.No. 121/2013 filed by present respondents No. 1 and 2 seeking permanent injunction in respect of the property which is claimed to be ancestral. The suit was dismissed. As such, aforesaid regular civil appeal, at the instance of the plaintiffs, has been filed and is pending. Under an application for interim

relief, interim injunction came to be granted by the appellate court. Said order had been taken up in appeal from order before this court.

4. While the appeal from order was under decision, according to learned counsel, the District Court -2, before which appeal is pending, had been insisting upon to proceed with the hearing of the appeal and the requests on behalf of the applicants for adjournments, awaiting the decision in appeal from order, were being ignored, giving indication of that the judge is proceeding with the appeal with undue haste and generates an impression that the applicants may not get justice before the district judge concerned.

5. It is being submitted on behalf of applicants that, under the circumstances, the applicants had been impelled to file application to transfer the regular civil appeal from District Judge – 2, Kopergaon to some other district judge before Principal District Judge, Ahmednagar. The Principal District Judge dismissed the application under his judgment and order dated 22/12/2016 and on the very next day the judgment in the appeal from order had been pronounced, under which the interim order

granted by the appellate court came to be reversed and set aside. It is submitted that the reasoning given while deciding the interim injunction application at appellate stage by the appellate court and the one given by the high court are wide apart. While deciding the interim injunction application in appeal, learned District Judge -2 has almost arrived at a conclusion that the trial court's judgment is unsustainable. In view of the aforesaid, the transfer of proceedings is being sought.

6. Learned counsel additionally adverts to medical certificate submitting that the applicant has undergone some surgery and due to which it is difficult for the applicant to climb up the stairs and be on the first floor at the hearing of the appeal.

7. Mr. G.G.Deshpande, learned counsel appearing for the respondents submits that present application is sans any substance and in effect purports to pose challenge to order dated 22/12/2016 passed by the Principal District Judge refusing to accede to the request to transfer proceedings. He submits that the reasons which have been given by the Principal District Judge are apt.

8. He submits that all the stages necessary in making the regular civil appeal reach final hearing have been completed and as such the matter is being proceeded with by the appellate judge accordingly.

9. It is not the case that the matter is being proceeded with under undue haste while request in appeal from order has been made to set aside order of interim relief. The high court had not stalled the proceedings. Under the circumstances, the matter is being proceeded with. To term the same as undue haste is an figment of imagination. He submits that present application has been moved for subjective reasons.

10. He submits that the reasons given while deciding interim injunction application would not be said to be the final observations and unlikely to decide the fate of the appeal. Appeal would be required to be decided on its own merits.

11. He submits that present application has been moved long after the decision has been rendered in appeal from order and the one rejecting the miscellaneous civil application for transfer by the Principal District Judge. He

submits that there is no substance in the request before this court for transfer of proceedings invoking section 24 of the code of civil procedure, while a reasoned order is already passed by the Principal District Judge.

12. The submissions on behalf of the learned counsel for the applicants reveal that applicants apprehend adverse considerations to their interest since the temporary injunction application has been decided against the applicants and the same has been set aside by this court and appeal was being proceeded with while decision was awaited from high court.

13. After hearing the learned counsel, it appears that the applicants have been over-anxious as the matter was being proceeded with, as stated, on day to day basis while appellate court had issued interim injunction giving *prima-facie* reasons and decision by high court in the appeal from order against it. Order of appellate court was awaited. Applicants appear to have been subjectively looking at appellate proceedings.

14. It may not be overlooked that it is submitted that all the stages for making the appeal reach final

hearing have been completed and is being taken up for hearing.

15. Observations in the decision of temporary injunction application by the district judge would hardly chart a course for decision in the matter. It does not appear to be a good reason to indulge into the request being made for transfer.

16. It will have to be always kept at the back of the mind that when the matters are being decided by the courts, those are to be decided on the basis of facts, circumstances, law, evidence and the merits of the case without getting influenced by extraneous considerations and will have to be decided objectively. I thus do not see any reason sufficient enough to be in favour of the applicant.

17. The miscellaneous civil application as such stands rejected.

[SUNIL P. DESHMUKH, J.]