

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 244 OF 2015
WITH
CIVIL APPLICATION NO. 527 OF 2015
CIVIL APPLICATION NO. 528 OF 2015

Laxman Kashinath Mali

...Appellant

Vs.

Ramesh Prayagraj Chavan and others

....Respondents

Mr. A.G. Damle, Senior Advocate, along with Mr. Sachin Nerkar for the Appellant/
Applicant.

Mr. Surel Shah for the Respondents.

CORAM : S.J. KATHAWALLA, J.
DATED : 12TH JULY, 2017

P.C.:

1. The Appellant—Laxman Kashinath Mali was the original Defendant in the suit filed by the Respondents herein (Original Plaintiffs) being Regular Civil Suit No.624 of 2005 before the 4th Joint Civil Judge, Junior Division, Sholapur at Sholapur for declaration, possession and mesne profits in respect of the suit property i.e. agricultural land bearing gat No. 99/2/10 (old Survey No. 337), admeasuring H.0 Are 67 situate at Majarewadi, Tal. North Sholapur (suit property). The suit was dismissed by a judgment dated 4th May, 2013, passed by the 4th Joint Civil Judge, Junior Division, Sholapur.

2. The Original Plaintiffs (Respondents herein) filed an Appeal impugning the judgment dated 4th May, 2015, passed by the 4th Joint Civil Judge, Junior Division, Sholapur, before the Court of Ad-hoc District Judge-1, Sholapur. The said Appeal was allowed and the judgment and decree dated 4th May, 2015 was set aside and the Defendant (Appellant herein) was directed to hand over vacant possession of the suit property to the Plaintiff within two months from the date of the order.

3. Being aggrieved by the said judgment dated 3rd February, 2015, passed by the Ad-hoc District Judge-1, Sholapur, the original Defendant (Appellant herein) filed the above Second Appeal before this Court on 4th March, 2015. 22 days thereafter i.e. on 26th March, 2015, the Appellant (Original Defendant) moved this Court (Coram: R.G. Ketkar, J.) for urgent interim reliefs. The Court was informed *after taking instructions* that the Appellant is in possession of the suit property in dispute and he has neither created any third party interest nor parted with possession as recorded in the order dated 26th March, 2015. The Court therefore by its order dated 26th March, 2015, directed that the Appeal be placed for admission on 13th April, 2015 and recorded that *“in the meantime, subject to the Appellant neither creating third party interest nor parting with possession, there shall be an ad-interim order in terms of prayer clause (b) of Civil Application No. 528 of 2015”*. The said prayer clause (b) is reproduced hereunder:

“(b) pending the hearing and final disposal of Appeal, this Hon’ble Court be pleased to grant stay on the impugned order dated 3rd February, 2015

passed by the Hon'ble District Judge-I, Sholapur in Civil Appeal No. 199 of 2013"

4. Therefore, the Appellant sought and obtained urgent reliefs from this Court by making a representation to the Court that the Appellant is in possession of the property in dispute and he has neither created third party interest nor has he parted with possession of the same.
5. About 18 days thereafter the Second Appeal came up on Board for admission when the Advocate for the Appellant sought time on the ground that the arguing Counsel was busy. The matter was adjourned to 29th April, 2015 and since even on that day no submission was made qua the statement earlier made with regard to the status of the suit property, the Court continued its order granting stay of the impugned order dated 3rd February, 2015 subject to the Appellant neither creating third party interest nor parting with possession of the suit/disputed property.
6. About 35 days after obtaining the ad-interim order by making a statement that the Appellant has not created any third party rights in respect of the suit property and is in possession of the same, on 29th April, 2015 the Appellant through his Advocate made a statement that in 1993 and 2014 he (the Appellant) has created third party interest in respect of 28 Are from the total area in dispute i.e. 67 Are. The Advocate for the Appellant also stated that the Appellant will file an affidavit disclosing this fact and enclosing therewith the relevant documents.
7. On 10th June, 2015, when the matter came up before this Court, the

assignments had changed. No affidavit was filed on behalf of the Appellant and the matter was adjourned to 24th June, 2015.

8. On 24th June, 2015, again no affidavit was filed setting out the correct status in respect of the suit property and the matter was adjourned for eight weeks. On 19th August, 2015, when the Second Appeal was called out, again no affidavit was filed qua the status of the suit property and instead time was taken on the ground that the arguing Counsel is not available. On 29th June, 2017, the Second Appeal was called out before me for admission, when at the request of the Respondents, the same was adjourned to 12th July, 2017.

9. Today i.e. 12th July, 2017, when the matter is called out, after going through the earlier orders passed, this Court realized that urgent ad-interim orders were sought and obtained in the matter by the Appellant by giving false and incorrect instructions to his Counsel that he is in possession of the property in dispute and he has neither created third party right nor parted with possession of the same. In view of the said statement, urgent ad-interim reliefs in terms of prayer clause (b) which is set out hereinabove was granted. On 29th April, 2015, the Advocate for the Appellant for the first time informed the Court that the statement made by the Plaintiff as recorded in the order dated 26th March, 2015, was incorrect and stated that he will place the correct facts by filing an affidavit enclosing therewith the necessary documents. The matter was adjourned to 10th June, 2015. The Appellant has thereafter in the last two years avoided filing of an affidavit as recorded in the order dated 29th April, 2015 and

has breached the statement made before the Court. In my view, the conduct of the Appellant i.e. obtaining an order from the Court through misrepresentation and for a period of more than two years thereafter not informing the Court on oath the correct status of the property despite making a statement before the Court as far back as on 29th April, 2015 that such Affidavit alongwith the relevant documents shall be filed before the Court, amounts to indulging in sharp practice and the same cannot be tolerated. Even today, after a period of two years, the Appellant is not ready with the affidavit and states through his Counsel that he will be filing an Affidavit. In view thereof, the above Second Appeal is dismissed. In view of the dismissal of the Appeal, nothing survives in the Civil Applications and the same are accordingly disposed of.

(S.J.KATHAWALLA, J.)