

CIVIL APPLICATION NO. 3226 OF 2015
IN
FIRST APPEAL NO. 1694 OF 2013

Sanjeev Madhav Joshi ... Applicant
(Orig. Respondent No.1 /
Plaintiff)

In the matter between

Archana Harishchandra Patekar ... Appellant
(Orig. Defendant No.4)

Versus

Sanjeev Madhav Joshi
and others ... Respondents

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Mr. Suhas Deokar for Applicant.
Mr. Mohit Jadhav for Respondent / Original Appellant.

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CORAM : S.C.GUPTE, J.
DATE : 11 APRIL 2017

P.C. :

By this Civil Application, the Respondents to the First Appeal seek variation of an interim order granted by this Court in Civil Application No.3963 of 2011. By this order, the execution of the decree of specific performance was stayed, subject to the undertaking on the part of Respondent Nos.2 to 4 as well as the Appellant herein that no third party interest would be created in respect of the suit property pending the disposal of the Appeal. It is prayed by the Respondents in the present Civil Application that this order may be varied by permitting the executing Court to appoint a commissioner to

carry out demarcation of 50 ares of land from as forest land from out of the suit property at the cost of the Applicant. It is also prayed that the commissioner be directed to apply to the Sub-Divisional Officer, Alibag, for permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act to obtain permission for sale of the suit property to the Applicant on the basis of the impugned decree of specific performance.

2. The second prayer obviously cannot be considered at this stage, since the decree of specific performance is stayed during the pendency of the Appeal, subject to the undertaking, as noted above. There should be no objection to having a survey made in respect of the suit property so as to or demarcate the forest land, if any, in the suit property. The Appellant has no objection if this exercise is carried out through Superintendent of Land Records and at the cost of the Respondents.

3. The Superintendent of Land Records is, accordingly, on the application of the Applicants, permitted to carry out survey of the suit property and demarcate any portion of land, which comes within forest land, as submitted by the Applicant. It will be open to the Respondents (Appellants in the First Appeal herein) to contest the position that some part of the suit property is forest land. This exercise of survey and demarcation shall be carried out at the cost of the Applicants.

The interim order passed by this Court on Civil Application No.3963 of 2011 is modified to this extent. The Superintendent of Land Records, after carrying out this exercise, shall submit a report to this Court.

4. Civil Application is disposed of accordingly.

(S.C.GUPTE,J)