

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

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1285 OF 2014  
IN  
SECOND APPEAL NO.529 OF 2014**

Smt. Ambutai Mahadeo Suryawanshi ...Applicant/Appellant  
vs.  
Shri Prakash Yashwant Aarate & Ors. ...Respondents

**WITH  
CIVIL APPLICATION (STAMP) NO.30568 OF 2016  
IN  
SECOND APPEAL NO.529 OF 2014  
WITH  
CIVIL APPLICATION NO.931 OF 2016 (Not on Board)  
IN  
SECOND APPEAL NO.529 OF 2014**

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Mr. A.M. Kulkarni, a/w. Mr. Akshay Shinde, fro the Applicant.  
Mr. V.S. Tadke, for the Respondents in Both Civil Applications.  
Mr. P.M. Arjunwadkar, for the Applicant in CAST/30568/2016.

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**CORAM : S.C. GUPTE, J.**

**DATED : 20 JANUARY 2017**

**P.C. :**

. Heard learned Counsel for the parties. Civil Application No.1285 of 2014 seeks stay of the judgment and order passed by the first Appellate Court, namely, the Adhoc District Judge-1, Sangli, in Regular Civil Appeal No.3 of 2014 on 16 August 2014. By the impugned judgment and order the decree passed by the Trial Court, namely, the

Civil Judge, Junior Division, Sangli, in Regular Civil Suit No.276 of 2008, for perpetual injunction, was set aside. The Plaintiff's suit was on the footing that her predecessor, one Vishnu, was a lessee of the entire suit property, which consisted of two portions, one of 35 ft. x 18 ft. on the eastern side and the other of 15 ft. X 18 ft.. The former portion was used by Vishnu for his business, whilst the latter portion was given to his brother Yeshwant out of love and affection and only by way of a permissive user. It was further the Plaintiff's case that the suit property was purportedly purchased by Defendant No.2 from one Ganapati Panchayatan Sansthan who had no right to the suit property and based on such purchase the Defendants were attempting to dispossess the Plaintiff and cause obstruction to her possession. The Plaintiff accordingly prayed for a perpetual injunction against such interference with her possession. The Trial Court partly decreed the suit and perpetually restrained the Defendants from obstructing the Plaintiff's possession of the portion admeasuring 35 ft. x 18 ft.. On the Defendants' appeal the first appellate court set aside that decree. It is, however, an admitted position that the Appellant throughout had an interim protection in respect of the portion of 35 ft. x 18 ft. This relief was continued by this Court in the present Second Appeal. The ad-interim relief initially granted on 1 October 2014 in the Second Appeal was continued on 15 July 2015. It is, however, a common ground that the Civil Application was wrongly treated as disposed of on 15 July 2015. As a result, the suit property, of which the Appellant herein (Original Plaintiff) claims to be in possession, and in respect of which she had secured originally a decree of perpetual injunction from the Trial Court and in respect of which she had secured ad-interim orders staying the

judgment and order of the first Appellate Court, came to be demolished by the Respondents. The Applicant, thereupon, took out a civil application, namely, Civil Application No.931 of 2016, for directions against the Respondents to reconstruct the property. After recording an apology on the part of the Respondents, this Court permitted the Applicant to reconstruct the property. The Applicant has reconstructed the same and claims to be in possession thereof. The Applicant's claim for being protected during the pendency of the Second Appeal from any interference with her possession, is opposed by Respondent Nos. 1. and 2 (original Defendant Nos. 1 and 2). It is the case of the Respondents that, by a sale deed dated 26 July 2005, Respondent No.2 has purchased the entire suit property consisting of both the portions from the original owner, one Ganpati Panchayat Sansthan, Sangli. Learned Counsel for the Respondents submits that since his clients have a title to the suit property and since the first Appellate Court has held in their favour, no interim relief ought to be granted to the Applicant/Appellant herein.

2. The Second Appeal herein was admitted by this Court on a substantial question of law, namely, whether the finding recorded by the Appellate Court in respect of possession of the suit property is based upon admissions, which are relevant to the controversy involved in the matter. In the minimum what this means is that this Court considers the question of possession of the suit property as giving rise to a substantial question of law. The Appellant/Applicant has been in possession of the property and her possession was even admitted by the predecessor-in-title of Respondent Nos. 1 and 2 in a previously instituted suit. That suit was withdrawn by the predecessor of Respondents unconditionally. Even

during the pendency of the first appeal as well as after the impugned judgment and order of the first Appellate Court and during the pendency of the present Second Appeal, for quite some time, the Appellant/Applicant was in possession of the suit property armed with an ad-interim protection restraining the Respondents from interfering with her possession. In these circumstances, an interim protection to the Appellant till the Second Appeal is finally heard must follow. Accordingly, Civil Application No.1285 of 2014 is allowed in terms of prayer clauses (b) and (c).

3. In view of the circumstances narrated above and the interim protection today confirmed in Civil Application No.1285 of 2014, no order needs to be passed in Civil Application No.931 of 2016, save and except in connection with the account and expenses incurred for reconstruction of the demolished structure and acceptance or otherwise of the apology tendered by Respondent Nos. 1 and 2. As far as the apology is concerned, since now the interim relief is confirmed in favour of the Applicant/Appellant and her possession is protected, there may be a case for taking a lenient view and accepting the Respondents' apology and drop further proceedings in this behalf. As for the account of the expenses incurred for reconstruction of the demolished structure, the issue will be decided at the hearing of the Second Appeal. Civil Application No.931 of 2016 is disposed of with the clarification as above.

( S.C. GUPTE, J. )