

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

**940 CIVIL APPLICATION NO. 6667 OF 2018
IN SA/373/2017**

ASHRU EKNATH DHAVAN

..Applicant

VERSUS

AMBAR JAYRAM KAPSE AND OTHERS

..Respondents

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Advocate for Applicant : Shri Amol K. Gawali

Advocate for Respondents No.1 & 2 : Shri S.D. Kulkarni

Advocate for Respondents No.3 & 4 : Shri D.B. Rode

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CORAM : P.R. BORA, J.

Dated: July 18, 2018

PER COURT :

1. Heard learned Counsel Shri Gawali for the applicant and learned Counsel Shri Kulkarni for the respondents.

2. First, I will deal with the request of restoration of the second appeal. From the record, it is quite evident that, since the appellant failed in submitting on record the paper book within the stipulated time, the appeal automatically stood dismissed in view of the following order passed by this Court.

“Whether both the Courts below have committed an error of law in shifting burden on the defendant to prove the disputed will, is the substantial question of law.

2. Hence, ***Admit.***

3. Upon admission, learned Counsel waives service of notice for respondent Nos. 1 and 2.

4. Paper book be filed within a period of six months from today, failing which, the appeal shall stand dismissed without further reference to the Court.”

3. The learned Counsel for the appellant/applicant has undertaken to submit the paper book within two weeks. In view of the undertaking so given by the learned Counsel, there appears no reason for not restoring appeal to its original file since it has to be decided on merits. The learned counsel for the respondent also did not seriously object for restoration of the appeal. As such, the appeal stands restored to its original file.

4. The second prayer in the present application is for reviving the order of stay, which was passed by this Court on 04.07.2017 thereby staying the execution of the impugned decree till decision of the second appeal. It is the contention of the applicant that, the applicant is still in possession of the suit property and as such there may not be any difficulty in continuing / reviving the order passed by this Court on 04.07.2017.

5. Shri Gawali, the learned Counsel appearing for the applicant brought to my notice that, before allegedly handing over the possession on 08.05.2018, the procedure in accordance with law was not followed by the concerned Revenue Officer. Prior notice in regard to partition chart (*wataptakta*) was not served on the applicant. According to the learned Counsel, it was mandatory. It is the further contention of the applicant that, the applicant had preferred a complaint in that regard before the Sub-Divisional Officer on 18.05.2018 and on the same day, the SDO had stayed the further execution and the said

order was communicated to the Circle Officer by way of WhatsApp. It is the further contention of the applicant that, in spite of the communication of the said order, subsequently concocted record has been prepared and the possession is shown to have been handed over on 18.05.2018. The learned Counsel submitted that, a false panchanama was prepared of handing over the possession of the disputed property and one of the panch who is alleged to have signed the said panchanama has sworn an affidavit, which has been filed on record by the applicant that his signature was obtained on a blank paper. The learned Counsel further pointed out that, even Tahsildar has passed an order cancelling the said so called *tabepavati* and thereafter before the police authorities the respondents have also accepted that, they will not be disturbing the possession of the applicant.

6. The learned Counsel for the applicant also invited my attention to the photographs placed on record evidencing that, the applicant is sowing the suit land on 25.06.2018. The learned Counsel submitted that, the applicant has thus placed on record sufficient evidence showing that, he is still in possession of the suit land and in the circumstances has prayed for reviving the order earlier passed by this Court on 04.07.2017 thereby staying the execution of the impugned Judgment and decree challenged in the present second appeal.

7. Shri S.D. Kulkarni, the learned Counsel appearing for

respondents No.1 & 2 has strongly opposed the contentions raised on behalf of the applicant. The learned Counsel inviting my attention to the documents filed by the respondents on record submitted that, all these documents unequivocally show that the possession of the property in question was already handed over to the present respondent and the panchanama as well as *tabepavti* were prepared in that regard. The learned Counsel submitted that, admittedly on the said date, the appeal was not in existence. The learned Counsel submitted that, the order obtained by the present applicant on 18.05.2018 from the vacation Court was communicated to the executing Court only on 11.06.2018. The learned Counsel submitted that, after possession of the subject land was handed over to the respondent, the necessary documents were prepared in that regard. The present applicant by applying pressure on the revenue authorities has prepared concocted record showing that, the order was communicated to the Circle Officer by the SDO staying the further execution and about the cancellation of the sale deed. The learned Counsel further submitted that, there is no provision which allows once execution is completed, to reopen the same without any order by the competent authority. The learned Counsel in the circumstances prayed that, there is no substance in the request made by the applicant for reviving the order of stay passed in favour of the present applicant by this Court on 04.07.2017.

8. I have duly considered the submissions made by the

learned Counsel appearing for the parties. I have also perused the documents placed on record by the respective parties. The document filed by the present applicant at Exh.X-2 at page no.65 of the paper book, which is an order passed by the SDO, Shrigonda dated 18.05.2018 reflects that, the SDO has entertained the complaint made by the present applicant as about non-following of the mandatory provisions of serving notice upon him. The further document which is placed on record at Exh.X-6 page no.72 of the paper book reveals that after receiving the orders from the SDO officer, the Circle Officer had cancelled the alleged possession receipt allegedly executed on 18.05.2018. The document at Exh.X-7 at page no.73 of the paper book reveals that, both the parties were called before the police authorities and the present respondents have agreed before the police authorities not to disturb the possession of the present applicant thereafter. Though the photographs are filed on record, it does not appear to me that, on the basis of the said photographs any conclusion can be drawn in favour of the applicant or against the applicant. However, after having considered the documents placed on record by both the parties, it is primarily revealed that, though on 18.05.2018 the *tabepavati* was allegedly shown to have executed, it does not seem to have been acted upon in view of the orders received to the Circle Officer from the SDO. Nothing has been brought on record or nothing has been submitted that, the order passed by the Circle Officer thereby declaring that the *tabepavati* shall be deemed to have been cancelled, is challenged by the present

respondents. In the circumstances, there is reason to believe that, the present applicant is still in possession of the suit land. Even if the rival contentions are to be considered on its own merits, it appears to me that, the status-quo as on today will have to be maintained till decision of the present appeal. I, therefore, deem it appropriate to pass the following order.

ORDER

(i) The status-quo as on today shall be maintained in respect of the property in question till decision of the appeal. Considering the dispute involved in the matter, I further deem it appropriate to place the second appeal for final disposal on 21.08.2018. The learned Counsel for the appellant/applicant to file the paper book within two weeks and provide the copy of it to the learned Counsel appearing for the respondents.

(PR. BORA, J.)