

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1538 OF 2017
IN
SECOND APPEAL NO. 783 OF 2017**

Krishna Ganu Basare (deceased)
through Lrs. Anubai Krishna Basare
& Ors.

..Applicants/ Appellants
(Original Plaintiffs)

v/s.

Laxmibai Pandurang Sawant & Ors.

..Respondents/Defendants
(Original Defendants)

Mr. Bhooshan Mandlik I/b. S.S.Patwardhan for the
Applicant/Appellants.

Mr. Rahul Walvekar for the Respondent Nos.1 and 2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 11th DECEMBER, 2018.**

P.C.

1. By this application, the applicant has sought to restrain the respondents herein by himself or through their agents, servants, etc with their peaceful possession of the suit property I.e 51 Ares out of land Gut No.547 totally admeasuring 1 Hectare and 03 Ares, situated at Village Shirgaon, Taluka Shahuwadi, District Kolhapur.

2. The appellants shall be hereinafter referred to as the plaintiffs and the respondents shall be hereinafter referred to as the defendants. The appellants are the legal representatives of Krishna Ganu Basare, the original plaintiff. He had filed a suit for declaration that he is the owner of the suit property and that the sale deed executed by the defendant nos.1 and 2 in favour of the defendant nos.3 and 4 is illegal, null and void.

3. The plaintiff claimed that Shripati and Baijabai had executed a mortgage cum conditional sale deed dated 11th August, 1973 in favour of his father Ganu Basare. The said mortgage was not redeemed and as a consequence thereof the plaintiff and his predecessor continued to be in possession of the suit property. The grievance of the plaintiff is that Yesabai had tried to get her name recorded in the survey records. She also tried to obtain forcible possession of the suit property. The plaintiff therefore filed a suit for declaration. During pendency of the suit, said Yesabai executed sale deed dated 10th October, 2002 in favour of the defendant nos.3 & 4.

The plaintiff therefore amended the plaint and impleaded the purchasers and challenged the sale deed dated 10th October, 2002.

4. The original defendant Yesabai denied execution of the mortgage-cum-conditional sale dated 11th August, 1972. She further denied that the father of the plaintiff was put in possession of the suit property. She claimed that she and the other co-sharers are in possession of the suit property.

5. The defendant no.1, daughter of Baijabai also denied execution of the mortgage cum sale deed dated 11th August, 1972. She claimed that the suit property was originally owned by Laxman Bhedase. He died in 1975 leaving behind his widow Baijabai and three children Shripati, Yesabai and Manjula. She claimed that she and the other legal heirs of Laxman had 1/3rd share in the suit property, and that Baijabai and Shripati had no right to transfer the entire land. She has further stated that Baijabai died in the year 1994 and thereafter her rights have devolved on her and the other legal heirs and that they continue to be in possession of the property. The defendant

nos.3 and 4 claim that they are the bonafide purchasers for value without notice.

6. Based on the aforesaid pleadings, issues were framed and evidence was adduced by the respective parties. Upon considering the evidence on record, the learned trial Judge decreed the suit. The defendants challenged the said decree in Regular Civil Appeal No. 134 of 2008. The first Appellate Court upon appreciating the evidence on record allowed the appeal and set aside the judgment and decree passed by the trial Court and consequently dismissed the suit. Being aggrieved by the judgment, the appellants who are the legal representatives of the original plaintiffs have filed the second appeal under Section 100 of CPC.

7. Heard Shri Mandlik for the appellants and Shri Walvekar for the respondents. The appellants herein have sought interim relief mainly on the ground that the first appeal was filed by the original defendant nos.3 and 4, and that the first Appellate Court has erred in holding that the plaintiffs have not established their possession in

respect of the suit property.

8. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The appellants claim that they are in possession of the suit property since the date of execution of the mortgage cum conditional sale in favour of the plaintiff. However, the survey records indicate that the name of the father of the plaintiff was not recorded in the survey records. Though his name had been recorded for the first time in the year 1995, the said entry was deleted by the order of the SDO. The survey records reveal that the property was recorded in the survey records in the name of Yesabai and the plaintiff was aware about the said entry.

9. The plaintiff had also admitted before the trial Court that he had filed the suit to oust Yesabai from the suit property and that pursuant to the order of injunction granted by the trial Court he had entered in the suit property as per the instructions given by his Advocate. This admission coupled with the survey entry prima facie

indicates that the plaintiff was not in possession of the suit property as on the date of institution of the suit. The suit property has been purchased by the respondents, who claim to be bonafide purchasers. No interim relief is operating against these respondents since 4th February, 2017. No case is made out to grant interim relief at this belated stage. Hence the application is dismissed.

(ANUJA PRABHUDESSAI, J.)