

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 943OF 2007
IN
SECOND APPEAL NO. 515 OF 2015**

Tanubai (Parvati) Balaram Patil & Anr. ...Applicants

Versus

Rajivaji Co-op. Spinning Mill Ltd. & Ors. ...Respondents

.....
Mr. D.V. Sutar a/w. Mr. Sandeep S. Koregave for the
Applicants.

Mr. P.D.Dalvi for Respondent Nos. 1 and 2.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **APRIL 19, 2018**

P.C.:

1. By this Civil Application, the applicants seek stay to the execution and implementation of the judgment and decree dated 2nd March, 2007 passed by the learned Ad-hoc District Judge-6 in Regular Civil Appeal No. 174 of 2002 arising out of the judgment and decree dated 8th March, 2002 passed by the learned 2nd Joint Civil Judge, Junior Division, Kolhapur in

Regular Civil Suit No. 1386 of 2000 till final disposal of the Second Appeal.

2. The applicants, who are the original plaintiffs, have filed a Regular Civil Suit No. 1386 of 2000 for declaration that the Sale Deed dated 10th May, 1993 is not binding on them. Respondent no.3/ defendant no.3 was a Karta of the plaintiff's family. Respondent no.3 had executed a Registered Sale Deed dated 10th May, 1993 in favour of respondent nos. 1 and 2/ defendant nos. 1 and 2 of the land in Gat No. 1457 area 1H. 20 acres situated at Dindnerli, Taluka- Karveer, District – Kolhapur. Against the judgment and decree dated 8th March, 2002 passed by the trial Court, the respondents have filed a Regular Civil Appeal No. 174 of 2002. The said Appeal was allowed by the First Appellate Court by judgment and order dated 2nd March, 2007. Being aggrieved by the said judgment and order, the applicants have filed this Second Appeal. Hence, this Civil Application.

3. The learned Counsel for the applicants submits the chronology of the orders. He points out the order dated 3rd

December, 2007 by which this Court had granted stay to the judgment and order dated 2nd March, 2007 passed by the First Appellate Court and the stay granted till 18th February, 2008. He further points out the order dated 22nd November, 2007 passed in Civil Application No. 942 of 2007, which was filed for condonation of delay. This Court by order dated 22nd November, 2007 issued notice to the respondents and directed the applicants to serve a private notice on the respondents within the stipulated time and if the order is not complied, the application shall stand dismissed for non-prosecution without further reference to the Court. He further submits that unfortunately the said order was not complied with and, therefore, the application filed for condonation of delay in filing the Second Appeal was dismissed. He further submits that as the application for condonation of delay was dismissed consequently the Second Appeal was also dismissed and the order of stay, which was granted by this Court on 3rd December, 2007 and which was in force till 18th February, 2008 also could not be continued thereafter. Thereafter, the applicants have filed Civil Application No. 515 of 2015 for condonation of delay of 7

years and 76 days in filing an application for restoration of Civil Application No. 942 of 2007, which was contested by the respondents. However, this Court by order dated 30th June 2015 allowed the said Application, restored the Second Appeal and also allowed the Civil Application No. 942 of 2007, which was filed for condonation of delay in filing the Second Appeal. Civil Application No. 943 of 2007 filed for stay was also placed on the same date. However, in the said Civil Application, this Court had given direction to issue notice to the non-applicants/respondents, returnable on 12th August, 2015. After pointing out these Civil Applications, he further submits that the applicants are still in possession of the suit land and in support of his submission, he relies on the contents in the application so also rejoinder and the documents i.e., receipts of sending sugarcane to Shri. Bhogabati Co-operative Sugar Mills, Karveer, Kolhapur. He has produced the receipts of Sugarcane Weighment Slip disclosing the Survey No. 1457 i.e., suit land. He has also produced 7/12 extracts of Survey No. 1457 and it shows that till April, 2015, the applicants had cultivated the suit land. He further points out that the names of the legal heirs of the

original appellant are still showing in owner column and also in cultivation column. Hence, he prays for stay.

4. The learned Counsel for respondent nos. 1 and 2 while opposing this Civil Application, submits that respondent nos. 1 and 2 / defendant nos. 1 and 2 are also in possession of the suit land from 10th May, 1993. The suit land was delivered by Registered Sale Deed dated 10th May, 1993 by the father of the plaintiffs. He further submits that respondents i.e., Rajivaji Co-op Spinning Mill Ltd. has constructed compound around the suit land and is in possession of the suit land and, therefore, no stay can be granted.

5. Heard submissions. There was an order of interim injunction that respondent nos. 1 and 2/ defendant nos. 1 and 2 shall not obstruct the possession of the plaintiffs over the suit land. The said order was granted by the trial Court during the pendency of the suit i.e., on 3rd February, 1997 in Regular Civil Suit No. 1386 of 2000 (old Suit No. 64 of 1995). The said order of interim injunction was never challenged by

the respondents. The First Appeal was decided on 2nd March, 2007. Thereafter, Second Appeal has been filed and this Court by order dated 3rd December, 2007 had passed the order that in view of the averments made in paragraph 11 of the Application i.e., Civil Application No. 943 of 2007, stay granted by the First Appellate Court after dismissal of the Appeal continued to operate till 18th February, 2008. It shows that during the pendency of the First Appeal, interim injunction which was granted by the trial Court continued for 10 years, which was never challenged by the respondents. The said Appeal was restored by this Court by order dated 30th June, 2015, however, the Appeal was also admitted. Though respondent nos. 1 and 2 in their affidavit in reply have stated that they are in possession of the suit land right from the date of the Sale Deed i.e., 10th May, 1993 and possession of the suit land was handed over on that date only, the fact remains that the order of injunction that they should not obstruct the possession of the plaintiffs over the suit land was never challenged by them. This conduct and inactions of respondent nos. 1 and 2 on the contrary supports the case of the applicants. In 7 x 12 extracts, the name of the

father of the applicants and the names of the applicants are bracketed and the name of respondents is also mentioned. This shows the fact of transfer of the ownership. In the cultivation column it shows self and crop of sugarcane was shown. The applicants have produced the receipts of Sugarcane Weighment Slip of Survey No. 1457 i.e., suit land. The name of the father of the applicants is also appeared on the Sugarcane Weighment Slips dated 20th November, 2016, 23rd November, 2016 and 24th November, 2016.

6. Considering the facts and circumstances of the case, I am of the view that it appears *prima-facie* that at present the applicants are in possession of the suit land and, therefore, the order of interim injunction passed by the trial Court is to be continued and the order passed by the First Appellate Court is hereby stayed till final disposal of the Second Appeal.

7. Civil Application is allowed and is accordingly disposed of.

8. The learned Counsel for respondent nos. 1 and 2 submitted that respondent nos. 1 and 2 want to challenge this order before the Supreme Court and hence, he prays to stay the operation of this order for 8 weeks.

9. In view of the facts and circumstances, prayer for stay of this order is rejected.

(MRIDULA BHATKAR, J.)