

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

CIVIL APPLICATION NO.4784 OF 2018
IN
CIVIL APPLICATION NO.10779 OF 2016
IN
SECOND APPEAL NO.515 OF 2016

Indalsing Jammansing Karghe & ors.
Versus
Nimsing Dhansing Karghe

...
Mr. R.G. Joshi, Advocate for the applicant Nos.1 and 2
Mr. B.S. Shinde, Advocate for the respondent
...

CORAM : SMT. VIBHA KANKANWADI,J.
DATE : 18th JANUARY, 2019

PER COURT :

1 By this application, the present applicants-respondents seeks setting aside ex parte interim relief granted by this Court in Civil Application No.10779 of 2016 dated 08.12.2017 allowing the Civil Application of the non applicant in terms of prayer clause B and C.

2 Heard learned Advocate Mr. R.G. Joshi appearing for applicants and learned Advocate Mr. B.S. Shinde for respondent. Perused the documents. It has been submitted on behalf of the applicants that when the

Civil Application No.10779 of 2016 was taken up for hearing, the learned Advocate appearing for the present applicants was absent due to his personal difficulty and under those circumstances the application came to be allowed. In fact, the suit of the present non applicant though allowed by the Trial Court, the Appellate Court allowed the appeal filed by the present applicants thereby dismissing the suit. He also submitted that by virtue of orders in Miscellaneous Civil Appeal, the present applicants were held to be in possession and now, because of the order passed by this Court on 08.12.2017 there is every likelihood of dispossession of the applicants.

3 Per contra, it has been argued on behalf of the respondent that opportunity was given to the present applicants to remain present and contest the said application, however, none appeared on that day and taking into consideration the absence of present applicants on that day as well as previous dates, entire record was considered and then the application was allowed in terms of prayer clause B and C.

4 Present non applicant No.1-original plaintiff had filed R.C.S. No.12/2012 before 2nd Jt. Civil Judge Junior Division, Sillod, it came to be decreed on 05.05.2014. The defendants therein were restrained from

enjoying peaceful possession over the suit land. Thereafter, the original defendants challenged the said decree in R.C.A. No.127/2014, which came to be decided on 16.06.2016, thereby the appeal was allowed and the suit was dismissed. Hence, the present Second Appeal has been filed. The Second Appeal has been admitted. Civil Application No.10779 of 2016 was filed for injunction. It appears from the order passed by this Court on 08.12.2017 that inspite of last chance granted to the respondent, none was present and therefore, all the facts were considered. It is specifically stated that, when the appellant had approached this Court in Writ Petition No.10126 of 2014, this Court by order dated 24.11.2014 directed original defendants not to disturb the peaceful possession and cultivation of the applicant i.e. plaintiff. It is stated that the said Writ Petition has been disposed of with direction to the First Appellate Court to decide the appeal within the stipulated period and accordingly the Lower Appellate Court has given decision. The appeal was allowed. Thus, it was taken into consideration by this Court that till the decision by the First Appellate Court, there was an order operating against the defendants regarding not to disturb the possession of plaintiff over the suit land. When it was also found that no

say was filed by the respondent to the application, the Civil Application has been allowed in terms of prayer clause B and C. Under such circumstance, now, merely because the learned Advocate for the applicant was under personal difficulty, the said order cannot be recalled. All the aspects were before this Court and in view of the order operating till then the possession of the plaintiff was protected. Hence, application is rejected.

(Smt. Vibha Kankanwadi, J.)

agd