

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

CIVIL APPLICATION NO.4686 OF 2018

IN

SECOND APPEAL NO.14 OF 2013

Asha w/o Manohar Dansure and others

... Versus ...

Kamalbai w/o Madhukar Dane and others

...

Mr. K.C. Sant, Advocate for the applicants

Mr. A.G. Godhamgaonkar, Advocate for the respondent Nos.1, 2A, 2B and 3

Mr. D.R. Irale Patil, Advocate for the respondent Nos.15A & 15B (absent)

Mr. S.D. Tawsikar, Advocate for the respondent Nos.6, 7, 10 to 15

Mr. M.A. Jahagirdar, Advocate for the respondent No.16

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 05th APRIL, 2019

PRONOUNCED ON : 06th JUNE, 2019

ORDER :

1 Present application has been filed for appointment of receiver.

2 Applicant Nos.7 and 8 are the respondent Nos.2 and 16 and the others are the original defendants. The Second Appeal No.14 of 2013 and Second Appeal No.1 of 2013 both are arising out of common Judgment and

order passed in R.C.A. Nos.84/2005 and 85/2005 by learned District Judge, Jalna dated 28.09.2012. While admitting both the Second Appeals this Court passed an order in Second Appeal No.1 of 2013 i.e. Civil Application No.18 of 2013 on 27.01.2016 that the execution proceedings to go on except handing over of actual possession of the suit properties till hearing and final disposal of the Second Appeal. It was also observed that “it is expected that the parties would not deal with sale, transfer or create any charge or third party interest over the suit properties”. It is stated that inspite of the specific orders respondent Nos.2A and 2B as well as deceased Mangala Vijaykumar Joshi have executed sale deed on 25.10.2017 in favour of Sunil Sadashiv Ambhore i.e. respondent No.16 in this application. Respondent Nos.2A and 2B have been arrayed as party respondent under the orders of this Court. It is stated that Mangala was aware about the order passed by this Court on 12.01.2018. Further, the applicants filed Civil Application No.462 of 2018 for issuing directions to respondent Nos.2A, 2B, 3 and 16 not to create third party interest in respect of land Gat No.308 situated at village Sipora, Tq. Jafrabad, Dist. Jalna. This Court, thereafter passed a specific order on 12.01.2018 that the sale deed executed on 25.10.2017 shall be subject to further orders in the Second Appeal. The notice in that application was served on those respondents. Yet, those respondents effected a correction deed in respect of

description of four boundaries of the property that was sold on 25.10.2017. It is also stated that another Civil Application was heard by this Court on the same day which was filed by Manjabai Eknath Shewale and the others i.e. Civil Application No.459 of 2018, in which this Court permitted the proceedings before executing Court to go ahead except in respect of actual delivery of possession of the suit property till disposal of the Second Appeal No.1 of 2013. It is stated that after the execution of the sale deed respondent No.6 has started activities in Gat No.308. He is levelling and cleaning the land by JCB machine. He has cut mango trees and other trees standing in the land. A complaint in respect of same was filed by one Pradip Anchanwadkar on 18.12.2017. Cognizance of the same was taken by Tahsildar, Jafrabad and he directed Talathi to visit the spot. As per the said visit, Talathi has reported that about 3-4 Mango trees and other trees have been cut. Even the Circle Officer has visited the spot on 11.01.2018 and found that 8-10 mango trees have been cut along with other trees. Panchnama to that effect has been prepared and sent to Tahsildar. It is stated that respondent No.16 is quite influential person. No tree has been cut or removed from land after the panchnama was drawn. Tahsildar has taken note of the illegal activity of respondent Nos.2A, 2B and 16 and therefore issued letter to Police Inspector, Jafrabad to take action and stop the further activities. The applicants have

produced photographs of the property on record. It is stated that they have also filed Contempt Petition in this Court for initiating contempt proceeding against respondent Nos.2A, 2B and 16. It is stated that a charge has been created on the suit property by some of the persons. The rights of all those persons are involved in the case. The activity carried out by the respondent Nos.2A, 2B and 16 is likely to result change in the nature of the property and it is necessary to protect the said property and to manage it properly it is necessary to appoint Collector, Jalna as a receiver of the property, till the decision of the appeal. Hence, the prayer for appointment of Court receiver has been made.

3 The application has been objected by those respondents, especially respondent No.16, on the ground that case is not made out to appoint Court receiver. It is also contended that they are dealing with the contempt proceeding separately.

4 Heard learned Advocate Mr. K.C. Sant for the applicants, learned Advocate Mr. A.G. Godhamgaonkar for the respondent Nos.1, 2A, 2B and 3, learned Advocate Mr. S.D. Tawsikar, Advocate for the respondent Nos.6, 7, 10 to 15 and learned Advocate Mr. M.A. Jahagirdar for the respondent No.16.

5 Learned Advocate for the applicants and respondent No.16 have

made submissions in support of their respective contentions. They are the only persons who are interested in this application. It was submitted on behalf of the applicants that appointment of Court receiver is necessary to protect the land from being wasted further and from changing the nature thereof. It was also stated that respondent No.16 as well as respondent Nos.2A and 2B have no heed to the orders passed by this Court.

6 Per contra, the learned Advocate appearing for respondent No.16 submitted that at present respondent No.16 is possessing the property and he is only levelling the land. It is absolutely not necessary to appoint Court receiver. He relied on the decision in **S. Saleema Bi vs. S. Pyari Begum, AIR 2000 (SC) 3513**, wherein it has been held that when defendant is physically possessing the suit property, the question, whether appointment of receiver is just and convenient; whether there is prima facie case in favour of plaintiff and whether it is an urgent measure required to be done by the Court, are required to be considered.

7 The photographs produced by applicants definitely goes to show that certain trees have been cut and the JCB machine was brought in the land. Here, we will have to segregate two things. The first is that whether defendant Nos.2A and 2B and respondent No.16 have committed intentional

disobedience of the order passed by this Court and another is that whether now, the activities taken by respondent No.16 would amount to wastage of the property. The revenue authorities have taken steps and cognizance has been taken in respect of felling of trees under concerned act. The injunction order is already running against the respondent Nos.2A and 2B who are the parties to the proceedings. In his affidavit-in-reply, respondent No.16 contends that he had no knowledge about any order passed by this Court as he was not a party earlier. He also comes with the case that initially when applicants tried to get favourable panchnama from Talathi and Circle Officer, those officers have given true report that no mango trees have cut, however, due to pressurizing tactics by applicant No.3 further action has been taken. He is disputing the photographs produced by the applicants.

8 For appointment of Court receiver as held in **S. Saleema Bi's** (supra) case and other catena of Judgments what is required to be considered is that whether it would be the last resort to protect the property and whether urgent measures are required. Now, as regards trees are concerned, even as per the contention of the applicants they are cut. Only there would be the question of levelling and utilization of the property which cannot be wasted and it cannot be said that any urgent measure is required by way of appointment of Court receiver in the present case. At the costs of

repetition it can be said that the application for taking action under Contempt of Courts Act will have to be dealt with separately and it cannot be mingled with this application. Therefore, no case is made out to appoint Collector as receiver of the property. Hence, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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