

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.71 OF 2018
WITH CA/13666/2018 IN AO/71/2018

KAILAS LALU RATHOD AND ANOTHER
VERSUS
RAU LALU RATHOD AND OTHERS

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Advocate for Petitioners : Shri Bhavthankar V.V.
Advocate for Respondents 1 to 3 : Shri Suryawanshi K. J.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 05, 2019

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PER COURT :-

1. On 31.10.2018, the petition was converted into an Appeal from Order and on 19.11.2018, I had passed the following order:-

"1. The appellants, who are original defendants in RCS No.120/2013 are aggrieved by the interlocutory order dated 08/10/2018 passed by the Appellate Court in Reg. Civil Appeal No.38/2018 filed by the original plaintiffs for challenging the judgment dated 18/04/2018 by which the Trial Court has dismissed the suit.

2. Grievance is that the suit has been dismissed by the Trial Court after concluding that the plaintiffs are not in possession of the suit property and they have no right or title over the said property. It is strenuously contended that cotton crop, which has been cultivated at the behest of these petitioners, is standing in the suit property and on account of the

interlocutory order, the original plaintiffs are likely to rob the petitioners of the standing crop.

3. *I find from the impugned order that the contention as regards these petitioners having cultivated the suit land and the cotton crop standing in the field, was not raised before the Appellate Court. Learned Advocate for the petitioners submits that the said issue was in fact canvassed and the Appellate Court has not adverted to the same.*

4. *Issue notice to the respondents, returnable on 05/12/2018. Humdast is granted on request.*

5. *Until the returnable date, the impugned order shall stand stayed. However, the litigating sides shall not harvest the cotton crop until further orders from this Court.*

6. *Copies of the appeal and application paper book shall be supplied on or before 24/11/2018, failing which, the ad-interim protection granted shall stand vacated without reference to the Court on 26/11/2018."*

2. Both the learned Advocates for the respective sides show their willingness to proceed with RCA No.38 of 2018, expeditiously.

3. The equities have been balanced by directing the parties to maintain status quo. In so far as the cotton crop that was standing in the field, learned Advocate for the respondents submits that both the

litigating sides have shared the harvest equally. Learned counsel for the appellant submits that he has no such instructions about the respondents having handed over any portion of the harvest to the appellants. I find that this issue can be left open for the appellate Court to consider.

4. In view of the above, this Appeal from Order is disposed off. The litigating sides would be bound by the order dated 19.11.2018 passed by this Court, until RCA No.38 of 2018 is finally decided.

5. In view of the above, the Civil Application does not survive and stands disposed off.

6. The appellate court would endeavour to decide RCA No.38 of 2018 as expeditiously as possible and in any case on/or before 15.6.2019, keeping in view the onset of the agriculture season, thereafter.

7. The learned Court below would be at liberty to reject frivolous applications for adjournments.

(RAVINDRA V. GHUGE, J.)

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