

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 23876 OF 2019
ALONGWITH
CIVIL APPLICATION NO. 2969 OF 2019

Sushila B. Gare

**..... Appellant/
Applicant**

VERSUS

Jagannath K. Patil & Ors.

..... Respondents

Mr.Nagesh Y. Chavan for the Appellant.

Mr.Makrand M. Kale for the Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 3rd MARCH, 2020

P.C.

By consent of parties, following order is passed :-

(a) Impugned order dated 21st February, 2019 passed by the learned District Judge - 2 Sangli below Ex.35 in M.A.C.P. Darkhast No.55 of 2015 is set aside. Application (Ex.35) is restored to file before the learned District Judge -2 Sangli for deciding afresh and in accordance with law and more particularly under the provisions of Order 21 Rules 58, 59, 98 and 101 of the Code of Civil Procedure, 1908 expeditiously. It is made clear that the learned District Judge shall decide the matter afresh and without being influenced by the

observations made and conclusion drawn in the order dated 21st February, 2019 by permitting the parties to lead oral evidence as well as documentary evidence.

(b) The attachment order passed by the executing court in respect of the property which is claimed by the appellant is also consequently set aside.

(c) The appellant is however directed not to create third party rights in the suit property till the application (Ex.35) is decided by the executing court and for a period of four weeks thereafter if the said application is decided against the decree holder.

(d) The executing court shall make an endeavour to dispose of the application within six months from the date of communication of the order.

(e) The parties are directed to co-operate with each other and with the executing court in disposing of the proceedings expeditiously as directed aforesaid.

(f) The parties as well as the executing court to act on the authenticated copy of this order.

(g) The appellant is at liberty to amend

application Ex.35 within two weeks from today and shall serve amended copy of such application upon the respondent. The respondent would be at liberty to file reply to such amended copy of the application within two weeks thereafter with a copy to be served upon the appellant's advocate.

(h) The executing court to decide the amended copy of the application.

2. First Appeal is disposed of on the aforesaid terms. No order as to costs.

3. In view of the disposal of the First Appeal, civil application does not survive and is accordingly disposed of.

[R.D.DHANUKA, J.]