

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAS) NO.524 OF 2019

IN

SECOND APPEAL NO.232 OF 2019

Chindu s/o Bhiwaji Saratkar and others.

Vs.

M/s Akash Construction Company, through its proprietor Shri Vinod s/o Ramrao Gaikwad and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Niharika Chandak, Advocate h/f Mr. Rohit Joshi,
Advocate for applicant.
Mrs. Geeta Tiwari, AGP for respondent no.2.
Ms. Swati Kulkarni, Advocate for respondent no.3.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 18, 2020.

The present second appeal, was admitted on 11.07.2019 by framing the substantial questions of law as indicated therein. Notices on the present civil application were issued on the same date.

2. Learned counsel Mr. Deopujari, waived service of notice on behalf of the respondent no.3 and the Assistant Government Pleader waived service for the respondent no.2.

3. The Farad sheet dated 23.08.2019, shows that the respondent no.1 is served both on the second appeal as well as the present civil application, however, none appears for the respondent no.1.

4. By the present civil application, it is claimed that the original defendant nos.1 to 5, being in possession of the suit property, their possession should be protected. Ms. Niharika Chandak, learned counsel invites my attention to the findings of the Trial Court specifically in Para 19 of the judgment, wherein it is held that the ownership and possession of the defendant nos.1 to 5, in the suit property is not in dispute. She further invites my attention to Para 11 of the judgment of the First Appellate Court which sets out the undisputed position, one of them being that the defendant nos.1 to 5 are in possession of the suit property. She therefore submits that since the appeal has been admitted on the substantial question of law as framed therein, the impugned judgment and decree of the Trial Court, and as upheld by the First Appellate Court directing execution of the sale deed and delivery of possession of the suit property be Stayed.

5. Considering the admitted position, that the defendant nos.1 to 5 are the undisputed owners of the suit property and are in possession of the same as held by both the Courts above, and in view of the fact that the second appeal has been admitted by framing substantial question of law on 11.07.2019 the effect an operation of the judgment and decree of the Trial Court dated 17.01.2017 as passed in Special Civil Suit No.468 of 2009 by the Civil Judge Senior Division, Nagpur is hereby Stayed till the decision of the

second appeal. At the same time, the defendant nos.1 to 5 are also restrained from creating any third party rights or interest in the suit property during the pendency of the present appeal.

6. Civil application is accordingly disposed of in the above terms.

JUDGE

Sarkate