

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1527 OF 2021

Baburao s/o Narayan Rasal (Deceased)  
Through his Legal Heirs

- 1) Pandhari s/o Baburao Rasal  
Age; 35 years, Occ; Agri.,  
R/o; Hasori (Khu), Tq. Nilanga,  
District; Latur.
- 2) Dnyaneshwar s/o Baburao Rasal  
Age; 32 years, Occ; Agri.,  
R/o; Hasori (Khu), Tq. Nilanga,  
District; Latur.

**...PETITIONERS  
(Ori. Plaintiffs/  
Appellants No. 1/4 &  
1/5)**

**V E R S U S**

- 1) Manik s/o Dhanaji Rasal (Deceased)  
Through his Legal Heirs
- 1/1) Ranubai w/o Manik Rasal  
Age; 65 years, Occ; Household,  
R/o; Hasori (Khu),Tq. Nilanga,  
District; Latur.
- 1/2) Rasikabai w/o Manik Rasal,  
Age; 60 years, Occ; Household,  
R/o; Hasori (Khu), Tq. Nilanga,  
District; Latur.
- 1/3) Uttambai Pandurang Jadhav,  
Age; 45 years, Occ; Household,  
R/o; Sangvi (J), Tq. Nilanga,  
District; Latur.
- 1/4) Kerabai Mohan Suryawanshi,  
Age; 42 years, Occ; Household,  
R/o; Hasori (Khu),Tq. Nilanga,  
District; Latur.

- 1/5) Raubai Prabhu Jadhav,  
Age; 40 years, Occ; Household,  
R/o; Halgara, Tq. Nilanga,  
District; Latur.
- 1/6) Dagdu Manik Rasal,  
Age; 37 years, Occ; Agri.,  
R/o; Lohara, Tq. Lohara,  
District; Osmanabad.
- 1/7) Sunil Manik Rasal,  
Age; 35 years, Occ; Agri,  
R/o; Hasori (Khu),Tq. Nilanga,  
District; Latur.
- 1/8) Chayabai Dnyanoba Jadhav,  
Age; 33 years, Occ; Household,  
R/o; Halgara, Tq. Nilanga,  
District; Latur.
- 1/9) Tai Sanjay More,  
Age; 30 years, Occ; Household,  
R/o; Ekundiwadi, Tq. Omerga,  
District; Osmanabad.
- 1/10) Gayabai Bhanudas Ingale,  
Age; 28 years, Occ; Household,  
R/o; Ekundiwadi, Tq. Omerga,  
District; Osmanabad.
- 1/11) Mayabai d/o Manik Rasal,  
Age; 26 years, Occ; Household,  
R/o; Sundarwadi, Tq. Omerga,  
District; Osmanabad.
- 1/12) Anusaya Pappu More,  
Age; 24 years, Occ; Household,  
R/o; Ekundiwadi, Tq. Omerga,  
District; Osmanabad.
- 2) Dagadu s/o Manik Rasal,  
Age; 35 years, Occ; Agri,

- 3) Sunil s/o Manik Rasal,  
Age; 35 years, Occ; Agri,
  - 4) Rashikabai w/o Manik Rasal,  
Age; 55 years, Occ; Household,
  - 5) Ranu w/o Manik Rasal,  
Age; 60 years, Occ; Household,
  - 6) Kerabai w/o Mohan Suryawanshi,  
Age; 40 years, Occ; Household,
- Respondents No. 2 to 6 all R/o; Hasori (Khu), Tq. Nilanga, District; Latur.
- 7) Govind s/o Yeshwant Ghorpade,  
Age; 50 years, Occ; Agri,
  - 8) Prabhu s/o Dattu Jadhav,  
Age; 45 years, Occ; Agri,
- Respondents No. 7 & 8 both residence of Halgara, Tq. Nilanga, District; Latur.
- 9) Madhumati Madhav Somwanshi  
Age; 40 years, Occ; Household,  
R/o; Palasgaon, Tq. Omerga,  
District; Osmanabad.
  - 10) Indubai Ramakant Jadhav,  
Age; 36 years, Occ; Household,  
R/o; Ujed, Tq. S. Anantpal,  
District; Latur.
  - 11) Khandu s/o Baburao Rasal  
Age; 33 years, Occ; Agri,  
R/o; Hasori (Khu), Tq. Nilanga,  
District; Latur.

**...RESPONDENTS  
(No. 1 to 8 - Orig.  
Defendants)  
(No. 9 to 11 - Orig.  
Plaintiffs/  
Appellants No. 1/1  
to 1/3)**

...  
Mr. V.C. Patil Asthekar, learned Advocate for Petitioners  
Mr. V.D.Salunke, learned Advocate for Respondents No. 1/1 to 1/12 and  
2 to 8  
...

**CORAM : SANDEEP K. SHINDE, J.**

**Reserved on : 19.06.2021**

**Pronounced on : 23.06.2021**

**JUDGMENT :**

1. Petitioners instituted R.C.S. No. 64 of 2013, seeking declaration of their title to the suit property, bearing Survey No. 53 ad-measuring 2 H 90 R, situated at village Hasori (Khu), Tq. Nilanga, District Latur and for perpetual injunction, was dismissed on 03<sup>rd</sup> November, 2020. Pending suit the learned Civil Judge vide order dated 12<sup>th</sup> June, 2013, restrained the defendants from interfering the possession of the plaintiffs over the suit land. This order was confirmed in Civil Misc. Appeal No. 13 of 2013. The suit was dismissed. Yet the learned Trial Court extended interim protection to the petitioners for some time. Petitioners/plaintiffs presented Regular Civil Appeal No. 18 of 2020 and filed application below Exh. 5 and requested the appellate Court to protect their possession over the suit land till the disposal of the Regular Civil Appeal No. 18 of 2020. The learned District Judge -1, Nilanga, declined the interim relief vide order dated 21<sup>st</sup> December, 2021. It is against this order the instant Writ Petition under Article 227 of the

Constitution of India is preferred.

2. Heard Mr. V.C. Patil/Asthekar, the learned counsel for the Petitioners and Mr. V.D.Salunke, learned counsel for Respondents No. 1/1 to 1/12 and 2 to 8. With the assistance of the counsels for the parties, I have also perused the material on record.

3. Mr. Salunke, learned counsel for the respondents objected to the maintainability of the writ petition. Mr. Salunke, contended that the appeal from order, is maintainable against the order dated 21.12.2020. On this point he seeks rejection of the writ petition.

4. An order of interim injunction passed by the Appellate Court during the pendency of the appeal against the dismissal of an application of temporary injunction, by the Trial Court is not an original order but an order passed in appeal within the meaning of Section 104 (2) of the Code of Civil Procedure ('Code' for short). Sub Section (2) of Section 104 contemplates only one appeal from orders and not two appeals. Thus, in view of provisions of Section 104 (2) of the Code the preliminary objection as to the maintainability of the writ petition is rejected. Insofar as the facts of the case are concerned, it may be stated that pending suit, defendants were restrained from interfering with the plaintiffs' possession over the suit land. This interim relief was in force since 2013, till

dismissal of the suit in November, 2020. In fact, even after dismissal of the suit the learned Trial Court extended interim protection for some time. The appeal is the continuation of the suit proceedings. A substantive appeal is pending for consideration before the appellate Court. In the circumstances, the propriety demands to preserve the character of possession of plaintiffs' possession over the suit property till the disposal of the First Appeal. The appellate Court while declining the interim protection, concluded the rights of the parties before advertng to the evidence adduced in the trial. The appellate Court has overlooked the fact that even after disposal of the suit, the trial Court had extended the interim protection which was in force since 2013. In the circumstances, the appellate Court was expected to continue the relief on such terms and conditions to justify it. That since the appellate Court has decided the point of 'possession' on merit, nearly, at the admission stage itself the appeal has been worked out and concluded. In consideration of the facts of the case, an interim protection granted by the trial Court vide order dated 12<sup>th</sup> June, 2013, shall continue to operate till the disposal of the Regular Civil Appeal No. 18 of 2020, pending on the file of the District Judge -1, Nilanga.

5. The suit property herein is 2 H and 90 R. Although the pending suit interim protection was in force but upon appreciating the evidence, the trial Court answered the issues, qua possession in

‘negative’ and thereby declined the decree of perpetual injunction. In the circumstances, though, I am inclined to continue the operation of order dated 12.06.2013, passed below Exh. 5 in suit No. 64 of 2013, it would be subject to the petitioners’ depositing Rs. 1,00,000/- (One Lakhs only) in the office of Nazir, of the Trial Court, within eight weeks from today. This amount is quantified in view of the fact that the Trial Court has concluded and answered all the issues against the plaintiffs, whereby, it was held that the plaintiffs could not prove their possession, in the suit property and the extent of property, is 2 H – 90 Rs. Pending suit, the injunction was running in favour of the plaintiffs nearly for eight years. In consideration of these facts to test the bonafides of the petitioners/plaintiffs, continuation of the interim order dated 12.06.2013 is subject to the petitioners’ depositing of Rs. 1,00,000/- (One Lakhs only) with the Nazir of the Trial Court within eight weeks from today. It is condition precedent. This amount shall be suitably invested and shall be returned /paid, subject to outcome of the Regular First Appeal. In the event RCA fails, amount with interest shall be made over to defendants, as a compensation, for depriving them, the user of the suit property.

6. In view of peculiar facts of the case the learned Appellate Court shall decide the Regular Civil Appeal No. 18 of 2020, preferably within six months from today. Parties shall appear before the learned Appellate Court on 5<sup>th</sup> July, 2021 and place the copy of this order before

the learned Appellate Court.

7. The Writ Petition is allowed in aforesaid terms and disposed of accordingly.

**( SANDEEP K. SHINDE )**  
**JUDGE**

mahajansb/