

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6663 OF 2021
IN SA/252/2000

ANUSAYABAI W/O KESHAV BRAMHANE AND ORS.
VERSUS
ANDRESH RAKHMA BRAMHANE AND ORS

...
WITH CA/13196/2017 IN SA/252/2000
WITH CA/13195/2017 IN SA/252/2000
WITH CA/13197/2017 IN SA/252/2000
WITH CA/13193/2017 IN SA/252/2000
WITH CA/15823/2010 IN SA/252/2000
WITH CA/13194/2017 IN SA/252/2000
WITH CA/2846/2000 IN SA/252/2000

...
Mr. A. P. Bhandari, Advocate for applicants
Mr. V. R. Dhorde, Advocate for respondent Nos.1 to 4.
Mr. R. K. Adsure, Advocate for respondent Nos.5 to 14
Mr. Y. B. Pathan, Advocate for respondent No.9.
Mr. S. P. Chapalgaonkar and Mr. S. S. Chapalgaonkar, Advocate for
respondent No.1 in CA Nos.13196/2017, 13195/2017, 1317/2017,
13193/2017.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 01.10.2021

Pronounced on : 02.12.2021

ORDER :-

. Civil Application No.6663 of 2021 has been filed by original respondent Nos.5, 7 and 8 in the second appeal seeking injunction against present respondent No.1 and legal representatives of respondent No.2 i.e. respondent Nos.2A to 2D from alienating, creating third party

interest, changing the nature of the suit property i.e. land Gut No.191 of village Loni (Kh.), Tq. Rahata, Dist. Ahmednagar till the decision of the second appeal.

2. Heard learned Advocate Mr. A. P. Bhandari for applicants, learned Advocate Mr. V. R. Dhorde for respondent Nos.1 to 4, learned Advocate Mr. R. K. Adsure for respondent Nos.5 to 14, learned Advocate Mr. Y. B. Pathan for respondent No.9 and learned Advocate Mr. S. P. Chapalgaonkar and Mr. S. S. Chapalgaonkar for respondent No.1 in Civil Application Nos.13196/2017, 13195/2017, 1317/2017, 13193/2017.

3. It has been vehemently submitted on behalf of applicants that the second appeal is admitted and it is pending for final disposal, however, appellant Nos.2, 3 and respondent Nos.1, 2, 3, 5 and 12 have expired. Application has been filed for bringing the legal representatives of appellant No.2 on record for which there is delay of 5844 days. Legal representatives of appellant No.3 are already on record. The appeal has abated against respondent No.1 by order dated 10.02.2016 passed by the learned Registrar (Judicial) and application for setting aside the said order as well as application to bring the legal representatives of respondent No.1 is still pending. Another application for condoning the delay of 5667 days in bringing legal representatives of respondent No.2

is pending. Respondent No.3 had passed away on 14.03.1997, when the matter was before the lower Appellate Court. Respondent No.5's legal heirs are on record. Respondent No.12 had passed away on 07.03.1998 and the civil application is pending for bringing her legal representatives on record. The original appellants are not prosecuting the appeal properly. Applicants are the original plaintiffs whose rights of having half share in the suit land has been confirmed by the judgment and decree passed by the learned Trial Court. The appeal preferred by the original defendants has been dismissed. The decree for partition and separate possession has been stayed by this Court and the applicants are waiting for the fruits of the decree for about 37 years. Now, during the pendency of the appeal, the property is mutated in the name of respondent Nos.1, 2A to 2D. They are taking certain steps to develop the property and thereby it appears that they want to change the nature of the same. They should preserve the property as it is till the decision of the second appeal and, therefore, there is necessity to pass an order protecting the interest of the applicants.

4. Per contra, the learned Advocate for original appellants submitted that the appeal is admitted and the other applications are pending. The appellants are not carrying out any such activities which is detrimental to the interest of the applicants. No such injunction was clamped on the

shoulders of the appellants during the pendency of the suit as well as appeal. He prayed for rejection of the application. Learned Advocates submitted that the prayer is mainly against respondent Nos.1, 2A to 2D in the application.

5. At the outset, it is the cardinal principle that when the appeal is admitted, the property involved in the matter should be preserved as it is, as it was in existence at the stage of both the Courts below. Merely because earlier, there was no such injunction, it cannot be said that it cannot be asked at this stage for the simple reason that now such activities are stated to be undertaken by respondent Nos.1, 2A to 2D, which according to the present applicants are detrimental to their interest. Photographs have been produced stating that JCB machine was brought to the plot/field and some digging activity had started. Additional affidavit has also been filed on behalf of applicants to support the application. There is no counter affidavit by respondent Nos.1, 2A to 2D stating that those photographs are from different site. Therefore, *prima facie* it has been shown that certain activities are being undertaken by respondent Nos.1, 2A to 2D in the suit property. The second appeal is admitted in the year 2000 and it appears that the other applications with huge condonation of delay are pending. That should not be a hurdle for the applicants to protect the property in respect of

which as on today, the decree is in their favour. Hence, in order to protect the property during the pendency of the second appeal, following order is passed :-

ORDER

I) Civil Application No.6663 of 2021 stands allowed and disposed of.

II) Respondent Nos.1, 2A to 2D, their servants agents or any person claiming through them are hereby restrained from alienating, creating third party interest, changing the nature of the suit property i.e. land Gut No.191 of village Loni (Kh.), Tq. Rahata, Dist. Ahmednagar, which is more particularly described in paragraph No.3 of the civil application, till the hearing and final disposal of the second appeal.

III) Place the other applications for further consideration on 20.12.2021.

[SMT. VIBHA KANKANWADI, J.]

scm