

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1310 OF 2021
IN
SECOND APPEAL NO.459 OF 2000

Kisanrao Gunwantrao Pawade
Since deceased, Through Legal heirs

1. Deelip s/o Kisanrao Pawade
Age: 56 years, Occu.: Agri.
2. Ramesh s/o Kisanrao Pawade
Age: 47 years, Occu.: Agri.
3. Balaji s/o Kisanrao Pawade
Age: 42 years, Occu.: Agri.

All r/o Wamanrao Pawade Mangal
Karyalaya, Purna Road, Nanded.

4. Suman Ashokrao Chavan
Age: 40 years, Occu.: Household
R/o. Halda, Tq. Hadgaon,
Dist. Nanded

... Applicants

Versus

1. Dnyanoba s/o Suryabhan Pawade
Since deceased, Through Legal heir
Rajeshwarrao s/o Bhaurao Pawade
Age: 62 years, Occu.: Agri.
R/o . Wadi (Bk.), Tq. & Dist. Nanded,
Chairman Bhajanmath, Wadi (Bk.),
Tq. & Dist. Nanded.
2. Syed Sadulla Syed Pasha
Age: 52 years, Occu.: Business,
R/o. Nayee Abadi, Nanded
Tq. & Dist. Nanded.
3. Mohmood Khan s/o Gulam Mohd. Khan
since deceased through legal heirs

- 3(i) Sabiya Begum Mohd. Khan
Age: 47 years, Occu.: Household
- 3(ii) Heena Jeenat Mahmood Khan
Age: 27 years, Occu.: Household
- 3(iii) Sameena Mahmood Khan
Age: 28 years, Occu.: Household
- 3(iv) Javed Mahmood Khan
Age: 37 years, Occu.: Business
- 3(v) Mohasin Khan Mahmood Khan
Age: 37 years, Occu.: Business
- 3(vi) Imran Khan Mahmood Khan
Age: 32 years, Occu.: Business
- 3(vii) Irfan Khan Mohmood Khan
Age: 30 years, Occu.: Business

All R/o. Mill gate, Khokadpura,
Nanded, Tq. & Dist. Nanded.

... Respondents

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Mr. R. S. Deshmukh, Senior Counsel i/b Mr. D. R. Deshmukh for
applicants.

Mr. L. V. Sangit, Advocate for respondent No.1.

Mr. M. R. Pande, Advocate for respondent No.2.

Mr. A. N. Ansari, Advocate for respondent Nos.3(i) to 3(vii).

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 21.06.2021

Pronounced on : 29.06.2021

ORDER :-

. Heard learned Senior Counsel Mr. R. S. Deshmukh for the
applicants, learned Advocate Mr. L. V. Sangit for respondent No.1,

learned Advocate Mr. M. R. Pande for respondent No.2 and learned Advocate Mr. A. N. Ansari for respondent Nos.3(i) to 3(vii).

2. Before considering the application, it will have to be stated that by order dated 16.02.2021, this Court after hearing learned Senior Counsel for the applicants for a while, had clearly observed that at the most the present civil application can be considered in respect of prayer clause 'C' and 'D' and, therefore, now also this Court proposes to consider the application to the extent of prayer clause 'C' and 'D'. By prayer clause 'B', the applicants prayed for modification or vacating the orders passed by this Court on 21.02.2001 in Civil Application No.1579 of 2000, which was for granting stay. So, when the applicants were coming for its modification or vacation after so much of delay and it is not the case that the applicants were not on record earlier to this application, in fact, their predecessor was already on record and he had appeared and thereafter, particularly, the present applicants came to be added by order dated 18.04.2019 in Civil Application No.5148 of 2019 in view of death of original respondent No.1, therefore, this Court was of the opinion that the prayer clause 'B' cannot be considered.

3. Learned Senior Counsel appearing for the applicants has taken this Court through the judgment passed by the learned Trial Judge i.e.

learned Joint Civil Judge Senior Division, Nanded in Regular Civil Suit No.179 of 1988 decided on 01.08.1992. It was specifically pointed out that original defendant No.3 had not even appeared and, therefore, matter had proceeded *ex parte* and then after considering the entire evidence, the suit came to be decreed in favour of the predecessor of the present applicants. Original defendant Nos.1 and 3 were directed to execute sale deed in favour of plaintiff. The suit was for specific performance of the contract. Thereafter, original defendant No.2 filed Regular Civil Appeal No.299 of 1992 challenging the said judgment and decree. The said civil appeal came to be decided by learned 3rd Additional District Judge, Nanded on 16.04.1999 and the appeal came to be dismissed. Now, original defendant No.2 is before this Court also. Learned Senior Counsel submitted that there was no direction to original defendant No.2, nor it can be said that the decree was against him and the fact is that original defendant Nos.1 and 3, who were so directed and the decree was mainly against them, they have not filed any appeal challenging the said judgment and decree, yet, this Court on 21.02.2001 stayed the judgment and decree passed by the learned Joint Civil Judge Senior Division, Nanded. The applicants are deprived of enjoying the fruits of the decree. Though original defendant Nos.1 and 3 had not filed any appeal, yet, they are carrying out illegal activities on

the suit property and they are selling portions of the land by laying lay out. Sale deed has been produced, so also photographs have been produced showing as to how high highhandedly those respondents, especially respondent Nos.3(i) to 3(vii) are acting and, therefore, they deserve to be restrained.

4. Learned Advocate for respondent No.1 in support of the affidavit-in-reply filed by respondent No.1 submitted that the said decree passed by learned Joint Civil Judge Senior Division is affecting respondent No.2's rights and therefore, he has preferred the appeal. He is rather protecting and observing the suit property by taking legal actions. Initially, when the appeal was filed, order of maintaining *status quo* was passed by this Court, however, in derogation to the said order, respondent Nos.2 and 3 including 3(i) to 3(vii) have unauthorizedly tried to alienate from land. In fact, a separate proceedings in the form of Writ Petition No.283 of 1997 is pending before this Court. When such high-handed action was taken by respondent Nos.2 and 3, respondent No.1 had initiated contempt proceedings by filing contempt petition No.65 of 2007 in the said writ petition. Initially, by observing that there appears to be *prima facie* substance, show cause notices were issued. Such contempt petitions were periodically filed when there was attempt on the part of respondent Nos.2 and 3. Thereafter on 16.01.2012, this

Court passed an order on the basis of statement made by the learned Advocate for respondent No.1 therein i.e. Sabia Begam that she has no intention to dispose off the disputed property in the light of order of *status quo* passed in the writ petition. So also statement was made that she will not carry any sort of construction over the disputed properties till the disposal of writ petition. Taking into consideration that statement, respondent Nos.2 and 3 were discharged and the contempt petition was disposed of in the light of the statement. Yet, if they are acting in derogation to the said statement, then the rights of the applicants and respondent No.1 be protected. However, there is absolutely no necessity much less require any order to be passed in terms of prayer clause 'C', which is mainly against respondent No.1 only.

5. Learned Advocate appearing for respondent Nos.3(i) to 3(vii) submitted that still she is abiding by the said statement that was made in the writ petition and no such activity is being carried out over the suit property in derogation of the order that has been passed in the matter.

6. At the outset, it can be seen that the order of maintaining *status quo* appears to have been passed in the writ petition filed by present respondent No.1. Thereafter, on the basis of the contempt petitions filed by respondent No.1, who felt that present respondent Nos.2 and 3(i) to

3(vii) are acting in derogation of the said order of *status quo*, would indicate that present respondent No.1 is trying to protect the property and to maintain the nature as it is. No doubt, as regards the judgment that is passed by the learned Joint Civil Judge Senior Division, it has been observed that original defendant No.2, who is claiming ownership over the suit property, had come with the case that he got the suit property by way of gift deed from deceased Rahimbee on 16.12.1986 and even after giving opportunities to produce proper documents on record, defendant No.2 had not produced it and, therefore, his claim was rejected. Yet, the fact remains that now his first appeal has been admitted, then it cannot be said that he has no interest at all in the subject matter. There are no instances quoted by the present applicants to show that respondent No.1 is behaving detrimental to anybody's interest/rights in respect of the suit property. However, as regards respondent Nos.2 and 3(i) to 3(vii) are concerned, it appears that apart from the contempt petitions pending against them, there are photographs showing certain construction activities and claim of respondent No.3(v) to represent the world that he is the owner of the suit property. When the appeal is admitted, then it is expected from every party to the litigation that they would maintain the same situation in the suit property till the decision of the appeal. Now, even after

passing the order of *status quo*, if such activities are being taken and also in the past i.e. on 10.08.2011, sale deed came to be executed in respect of the portion of the land, *prima facie* case has been made out for grant of injunction against respondent No.2 and 3(i) to 3(vii) till the final disposal of the appeal. No *prima facie* case made out, as aforesaid, in respect of prayer clause 'C'

7. Hence, application stands partly allowed in terms of prayer clause 'D' only.

8. Application stands rejected in respect of prayer clause 'C'.

[SMT. VIBHA KANKANWADI, J.]

scm