

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 3057 OF 2020
IN
SECOND APPEAL NO. 95 OF 2012**

Shri. Kondiba Keshav Salunkhe
(since deceased) through Lrs. & Ors. ..Applicants
V/s.

Shri. Vishwanath Ganpath Tambe & Ors. ..Respondents

Ms. Vrushali Maindad for the Applicants.

Mr. B.G. Ligade i/b Dhruvad Patil for the Respondent Nos. 1 to 7.

CORAM : C.V. BHADANG, J.

DATE : 04th MARCH, 2021

P.C.

1. Heard the learned counsel for the parties.
2. The Second Appeal is already admitted. This application is filed for following reliefs:

a) That pending the hearing and final disposal of the Second Appeal bearing No. 95 of 2012 this Hon'ble Court be pleased to stay the effect and operation of the impugned order dated 29.09.2011 passed by Ld. District Judge, Satara in Regular Civil Appeal No. 340 of 2007 and order dated 04.10.2007 passed by Ld. Civil Judge,

Junior Division, Khandala, Dist. Satara in Regular Civil Suit No. 207 of 2001;

b) That pending the hearing and final disposal of the Second Appeal bearing No. 95 of 2012 this Hon'ble Court be pleased to restrain the Respondents from dealing with, disposing of, alienating and/or creating any third party rights, title and/or interest of whatsoever nature in respect of suit property in favour of any other person or persons;

c) Costs of this Application be provided for;

d) Pass such further and other reliefs as the nature and circumstances of the case may require."

3. Insofar as the prayer clause (a) is concerned, the same is not competent inasmuch as the suit filed by the appellants/applicants for specific performance was dismissed by the Trial Court, which has been confirmed by the first Appellate Court. Thus, there is no effective decree in existence, which can be stayed.

4. Insofar as prayer clause (b) is concerned, it is undisputed that there was no such order in favour of the appellants/applicants restraining the respondents from creating the third party interest in the suit property in the Trial Court or the first Appellate Court. It can, thus, be seen that the appellants are without protection of any such order from the year 2001. Thus, no case for granting of any

such relief is made out particularly in view of the fact that at present there is concurrent findings by two courts against the appellants/applicants.

5. The learned counsel for the respondents points out that the applicants have not expressed any apprehension of respondents trying to create third party interest.

6. In that view of the matter, the Interim Application is dismissed.

C.V. BHADANG, J.