

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

**INTERIM APPLICATION NO.214 OF 2021
WITH
INTERIM APPLICATION NO.215 OF 2021
IN
SECOND APPEAL NO.34 OF 2021**

Shaukat Mahamad Hajoo ..Applicant
Vs.
Sau.Noorjahn Rafik Bandiwale
Maidan name Noorjahan Mahamad
Hajoo & Ors. ..Respondents

Mr. A. S. Khandeparkar a/w. Mr. Rohit P. Mahadik a/w. Mr. Rajdeep Uvde a/w. Mr. Shubham Jawalekar i/b. Khandeparkar & Associates, for the Applicant / Appellant.

Mr. Shreepad Murthy a/w. Mr. Samar Juvekar, Clarissa Miranda i/b. Mr. Abhishek Patil, for the Respondent Nos.1, 4 to 9.

Respondent Nos.1, 4, 5, 6, 7 and 9 are present.

**CORAM : C.V. BHADANG, J.
DATE : 01st MARCH 2021**

PC.

. Heard the learned counsel for the parties.

2. Interim Application No.215/2021 is for stay of the impugned judgment and decree while IA No.214/2021 is filed by the appellant / applicant for withdrawal of the amount.

3. The second appeal has been admitted on the basis of the substantial questions of law as framed.

4. In so far as the withdrawal of the amount is concerned, the contesting parties have arrived at Consent Terms which are taken on record and marked 'X' for identification.

5. The parties except respondent Nos.11 to 14 are the successors of late Mahamad Ajij Hajoo who died on 18/2/2002. The first respondent filed R.C.S. No.09/2010 against the appellant (defendant No.1) and others for partition, separate possession and perpetual injunction in respect of the landed properties and house properties. It appears that there were in all nine landed properties and six house properties, more specifically described and set out in the judgment of the Trial Court.

6. The learned Trial Court decreed the suit on 29/3/2018 granting certain shares to the parties. The first respondent (original plaintiff) challenged the same before the learned District Judge at Ratnagiri in Civil Appeal No.29/2018. The learned District Judge by judgment and decree dated 8/6/2020 passed by the learned Trial Court, modified the decree granting 1/11th shares each to the

daughters and 2/11th share each to the sons. In so far as the respondent No.10 (defendant No.10) Abdul Rahiman Husain Hajoo (since deceased) is concerned, he was granted half share in the suit property No.5.

7. It appears that out of the landed properties, property at Sr. No.1 (Gat No.384-A) and Sr. No.6, (Gat No.329) alongwith house properties at Sr. No.4 to 6 have been subject matter of acquisition and the amount is deposited before the Reference Court in the concerned land acquisition reference. The parties have now agreed to withdraw 1/11th share to each of the daughters including the respondent No.1 and 2/11th share each to the sons of late Mahammad Hajoo.

8. The parties admit the correctness of the contents of the Consent Terms.

9. The learned counsel for the parties have pointed out that the respondent Nos.11 to 14 who are the purchasers of the property at Sr. No.8 were already deleted before the First Appellate Court. They are also permitted to be deleted in this appeal. In so far as the legal representatives of the respondent No.10 are concerned, it is pointed

out that the respondent No.10 has not been granted any share in the properties, which are subject matter of acquisition.

10. In that view of the matter, the Interim Application No.214/2021 is disposed of in view of the Consent Terms (marked 'X' for identification). It will be open for the concerned parties to withdraw the amount deposited on account of the acquisition of the properties, as agreed under the Consent Terms.

11. Subject to this, there shall be ad-interim stay to the impugned judgment and decree pending disposal of the appeal.

12. The Interim Application No.215/2021 is disposed of accordingly.

C.V. BHADANG, J.