

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAS] No.440 of 2021
in
Second Appeal No.276 of 2012

Shankar Laxman Johare [Dead] through L.Rs.
vs.
Bhaurao Laxman Johare

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*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

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Court's or Judge's Orders

*Ms. Trishala Dhait h/f Shri Abhay Sambre, Advocate for the
 Applicant/Respondent.*
Shri S.D. Malke, Advocate for the Non-Applicants/Appellants.

CORAM : S.M. MODAK, J.
DATE : 9th AUGUST, 2021.

Heard both the sides.

02] This Court has accepted the statement made by the learned Advocate for the appellants about not creating third party interest during pendency of this appeal on 05/09/2013. On that statement, the execution of the judgment and decree was stayed. Surprisingly, appellant No.8-Kailas Johare executed a registered sale-deed on 14/07/2020 in respect of part of the suit land. It's copy is filed on record. Vide order dated 02/08/2021, this Court has expressed an opinion about vacating the stay.

03] Appellant No.8, through his learned Advocate, has filed a reply and he has not disputed the sale-deed. He has tried to explain under what circumstances, he has executed the sale-deed. My attention is also brought to the averments of internal page 3 of the sale-deed, wherein the vendor i.e. appellant No.8 has stated that the property is not subject to any litigation.

Respondent Nos.1 to 7 have filed a separate reply and submitted that as they have not committed breach of the undertaking, stay in their favour may not be vacated.

04] It is also submitted that appellate No.8 also breached the undertaking before the first appellate Court. Certainly, the stay granted in favour of appellate No.8 needs to be vacated. Appellate Nos.1-a to 1-g are the legal representatives of deceased appellate No.1-defendant No.1 Shankar. As per the decrees of trial Court and the first appellate Court, plaintiff-Bhaurao and defendant No.1-Shankar were held entitled to $\frac{1}{2}$ share in the suit land. My attention is drawn to the area sold by appellant No.8 from his share allotted to him from the suit land. It is mentioned on page 1 of the sale-deed.

05] It is difficult for this Court to make any comment about what sort of arrangement the appellants have made in respect of the suit land. I am not inclined to vacate the stay so far as the other appellants are concerned, because there is no grievance that they have breached the undertaking. However, as the respondent has made a grievance about such sort for the first time before the Court and earlier before the first appellate Court compels this Court to pass certain strict directions. The remaining portion as shown in the sale-deed coming to the share of appellant No.1 needs to be attached. At the same time, the remaining area of the suit land also needs to be attached (the Court is not aware what sort of distribution the appellants have made amongst themselves). Hence, this Court is of the opinion to attach the remaining area of the suit land. It

is also necessary to inform the revenue authority about the same, so that if there will be an attempt in future on the part of the appellants to sell the land, the prospective purchaser will come to know about this fact. These circumstances compel this Court to pass the following order :

- (i) Stay to the execution of the decree passed, so far as appellant No.8 Kailas Johare is concerned, is vacated.
- (ii) The remaining portion coming to the share of appellant No.8 from the suit land, as described in the sale-deed, is attached during pendency of the appeal.
- (iii) Appellant No.8 is directed to inform this fact to the concerned revenue authority and the revenue authority to make mention of this fact on 7/12 Extract.
- (iv) Appellant Nos.1-a to 5 and 7 and the legal representatives of appellant No.6 are directed to inform the revenue authority that their shares are also attached by this Court during pendency of the appeal.
- (v) The revenue authority is directed to take note on 7/12 Extract.
- (vi) All the appellants are directed to comply with these directions and produce a copy of 7/12 Extract having said endorsement.
- (vii) It is made clear that the appellants, who were cultivating the land, may continue the cultivation.
- (viii) The application is allowed and disposed of accordingly.

Civil Application Nos.465, 466 & 467 of 2021 :

Appellate No.6 expired on 22/04/2021. For the reasons stated in the applications, the steps could not be taken for bring the legal representatives on record. The reasons are convincing. A copy of death certificate issued by the Gram Vikas Adhikari, Gram Panchayat, Andera is produced on record. It is marked as Annexure-X.

In view of that, the following order is passed :

- (i) The delay caused in filing the applications for setting aside abatement and for bringing legal representatives on record, is condoned.
- (ii) Abatement of appeal, so far as appellate No. 6 is concerned, is set aside.
- (iii) His legal representatives be brought on record.
- (iv) Amendments be carried out.
- (v) The applications are disposed of accordingly.
- (vi) The matter be kept on 8th September, 2021.

JUDGE

**sandesh*