

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 9383 OF 2022
IN
SECOND APPEAL NO. 876 OF 2004**

Rangnath Gyanoba Agarkar and Another ..APPLICANTS

VERSUS

Suresh Rangnath Agarkar and Others ..RESPONDENTS

....
Mr. H.V. Tungar, Advocate for applicants

Mr. Dhananjay Deshpande, Advocate for respondent no.1

....

**CORAM : R.G. AVACHAT, J.
DATE : 14th JULY, 2022**

PER COURT :

1. This application has been moved by Respondent Nos. 1 and 2 in the second appeal. They are original Defendant Nos. 1 and 2 in the suit, instituted by Respondent No.1 herein for partition and separate possession of the agricultural land and house property described in the plaint. Present application has been moved by the applicants for permission to mortgage their share in the suit land for raising of crop loan.

2. The application has been strongly resisted by Respondent No.1 – original plaintiff contending that the trial Court has decreed the suit declaring him to have 1/3rd share in the suit properties. The first appellate Court has,

however set aside the same. The suit land totally admeasures 9 Hectors 68 R (24 Acres 8 Gunthas). 1/2 share thereof comes to 4 Hectors 84 R (12 Acres 4 Gunthas). Applicant No.1 has sold 4 Acres 84 Gunthas of land under two registered sale deeds. His share in the suit land thus reduced substantially. Both the purchasers are parties to the appeal. The said transactions were executed in breach of an order restraining him from alienating the suit land in whatsoever manner. In November 2013, the applicants were permitted to mortgage the land only for a period of one year. If the present application is allowed, it would amount to create third party interest and breach of order passed in the appeal. Respondent No.1 is ready to work-out the appeal at the earliest. In 2021, the land was mortgaged for raising a loan of Rs.1,85,000/-. The applicants had also mortgaged the land and raised loan of Rs.3,56,000/- in April 2022. If the application is allowed, same would create complications that would prejudice the right, title and interest of the respondents in the suit land. Rejection of the application was, therefore, urged for.

3. Considered the submissions advanced. It is a dispute between the son and father. The suit filed for partition and separate possession had been decreed declaring him to have 1/3rd share in the suit lands. The first appellate Court has reversed the decree and dismissed the suit. True, Applicant No.1 – father had alienating some portion of the suit land when there is order restraining him from creating any third party interest. For such

breach of order, the respondent may initiate appropriate action. The applicants seek this Court's permission to mortgage their share in the suit land for raising of a crop loan, amounting to not more than Rs. 2 lakhs. The period of loan shall be for a period of one year. The bank is not sanctioning the loan in view of Court's restraint order. The applicants have placed on record total valuation of the suit land. The valuation is stated to be little over Rs.56 lakhs. Since the applicants are agriculturists and proposed to raise a crop loan, this Court is inclined to grant the application, more so, when the the Applicant No.1 – father has filed an affidavit stating therein as on today no loan is outstanding.

4. Civil application is, therefore, allowed in view of following order:

ORDER

- (I) The applicants are permitted to raise a crop loan as against execution of mortgage of the suit land to the extent of 1/2 share (after deducting the area of land sold by Applicant No.1 – father pending the suit).
- (II) It shall be a crop loan for a period of one year.
- (III) The amount of loan shall not be more than Rs.4,00,000/- (Rupees Four Lakhs).

(R.G. AVACHAT, J.)

SSD