

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CIVIL APPLICATION NO. 14044 OF 2021 IN SA/627/2021

DATTATRAYA ANANDA SALVE AND ANOTHER
VERSUS
ANANDA SAWALARAM SALVE AND OTHERS

...
Advocate for Applicants/Appellants : Mr. R.S. Sadaphule
Advocate for Respondents no. 1 to 5 : Ms. Rakhi V. Sundale
...

CORAM : MANGESH S. PATIL, J.

DATE : 5TH JANUARY, 2022

PC :

Heard.

2. The original plaintiffs, who had filed a suit for general partition of the suit property, claiming themselves to be the legitimate son and wife of respondent no. 1, succeeded in obtaining a decree from the trial Court, which has been quashed and set aside by the appellate Court by the judgment under challenge in this Second Appeal.

3. By way of this Application, the appellants are seeking stay to the execution and operation of the order of the first appellate Court with a further prayer, restraining the respondents from withdrawing any amount of compensation, which stands deposited in the reference Court in respect of portion of land acquired under the Land Acquisition Act.

4. The learned Advocate for the appellants submits that the appellant no. 2 is the legally wedded wife of respondent no. 1 and appellant no. 1 is their legitimate son. The trial Court had rightly held them to be entitled to get a share in the suit property, which is admittedly an ancestral and joint family property. He would further submit that a specific stand was taken by the appellants before the trial Court that the respondent no. 2 is not the legally wedded wife of the respondent no. 1 and the other respondents are not their legitimate issues. If the respondents now succeed in withdrawing the entire amount of compensation, it would cause serious prejudice to the rights of the appellants. Since there are inconsistent findings of the two Courts below, there is a genuine case for the appellants to succeed in this second appeal. Therefore, the balance of convenience lies in their favour and the interim relief be granted.

5. The learned Advocate Ms. Rakhi Sundale for the respondents vehemently submits that the appellants had miserably failed to prove that the appellant no. 2 is the legally wedded wife of the respondent no. 1. The respondents have fairly admitted the relationship between the appellant no. 2 and the respondent no.1 and even the fact that the appellant no. 1 is the illegitimate child of the respondent no.1. As against this, the respondents have duly established before the trial Court that the respondent no.2 is the legally wedded wife and the other respondents are their legitimate children.

6. The learned Advocate Ms. Sundale would then submit that in view of the provisions of section 16(3) of the Hindu Marriage Act, an illegitimate child can only have a right in the property of the parents. Since the suit property is admittedly an ancestral property, the appellant no.1, if at all can lay a claim after the demise of the respondent no.1 that too, to the extent of his share. So long as he is alive, the illegitimate son cannot claim partition. All these matters were ignored by the trial Court and the error has been rectified by the appellate Court, dismissing the suit. She would, therefore, submit that the entire amount of compensation is now sought to be blocked, ignoring the interest of the respondents to have the compensation.

7. Needless to state that the aforementioned facts and circumstances are disputed questions, which will have to be gone into and answered at a full fledged hearing.

8. The fact remains that admittedly the property in dispute, is an ancestral property. Though the respondents are admitting the appellant no. 1 to be the illegitimate son of the respondent no.1, and for this reason, he may not have a right during the lifetime of the respondent no.1, to claim any partition, it would be just and proper that instead of granting any blanket stay, as being claimed by the appellants, the compensation to the extent of 1/3rd amount may be secured, by issuing necessary directions, else a serious prejudice is certain to be caused to the appellants if ultimately they succeed in this appeal.

9. The Application is partly allowed. The prayer restraining the respondents from withdrawing entire amount of Rs. 86,96,148/- is rejected. However, the reference Court, while allowing the respondents to withdraw amount of compensation, shall permit such withdrawal on respondents furnishing personal recognizance and solvent security to the tune of 1/3rd amount of the compensation. Such withdrawal of the amount of compensation shall be subject to the outcome of the second appeal.

10. Second appeal be placed on Board on 02-02-2022.

[MANGESH S. PATIL, J.]

arp/