

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

SECOND APPEAL NO.91 OF 2021

(Kuldeep Jagannathrao patil (Sangloodkar) (dead) thr. L.R's Vs. Manohar s/o Chandrabhanji Shelke)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.J. Chandurkar, Advocate for the appellant.
Shri V.G. Palshikar, Advocate for the respondent.

CORAM : M.S. KARNIK, J.

DATED : APRIL 29, 2022.

Heard.

2. **ADMIT** on the following substantial question
of law :

“i) Whether the appellate Court was justified in decreeing the counter claim of the defendant thereby declaring the license in favour of the defendant in respect of the suit property as irrevocable under Section 60(b) of the Indian Easement Act, 1882 in the face of the substantive relief prayed for in the counter claim that in view of an express grant the plaintiff is divested of his title?”

3. Shri V.G. Palshikar, learned counsel for the respondent, waives notice.

4. Call for R. & P.

CIVIL APPLICATION NO.213 OF 2022

This is an application by the appellant for grant of temporary injunction restraining the respondent from mutating the entries in any revenue records or municipal record. The appellant also prays that the

respondent be restrained from creating third party interest in the suit property.

2. It is the case of the appellant – original plaintiff that he is the owner of the suit property through his predecessor in title. The respondent-defendant was permitted to occupy the suit premises as an employee of the appellant's mother. The case of the defendant was that there was a permanent grant in his favour as a result the plaintiff was divested of his title. The defendant contended that he has put up permanent construction at his own expense upon being so permitted by the appellant. Accordingly a counter claim was filed by the defendant.

3. The suit for possession filed by the plaintiff came to be decreed by the trial Court. The counter claim was dismissed.

4. The appellate Court reversed the decree of the trial Court. Accordingly, the plaintiff's suit was dismissed. The counter claim of the defendant was allowed declaring that the license in favour of the defendant in respect of the suit property is irrevocable under Section 60(b) of the Indian Easement Act, 1882.

5. I have admitted the appeal on the substantial question of law as framed in the Appeal.

6. The defendant has filed the reply opposing the civil application. In paragraph No.3 it is stated as under:

“3. The respondent approached to M.C. Daryapur to record his name as occupant in the month of March 2021 and the M.C. recorded the name of respondent as Bhogwatadar and applied to land record on 02/09/2021. Same is pending. It is denied that the respondent applied for recording for ownership. It is denied that the respondent is attempting to create third party interest.”

7. Considering the nature of the controversy and the statement of the defendant in paragraph No.3, I am of the opinion that no prejudice will be caused to the respondent if the reliefs prayed for in the civil application is granted. The defendant is in possession. The Appeal is admitted on a substantial question of law.

8. Hence, the civil application is allowed in terms of prayer clause (i) and (ii).

9. The interim relief shall operate during the pendency of this appeal.

10. Civil application is disposed of.

(M.S. KARNIK, J.)

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