

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2357 OF 2023

IN

SECOND APPEAL NO. 876 OF 2004

Rangnath S/o Gyanoba Agarkar
and Anr

...Applicants

Versus

Suresh S/o Rangnath Agarkar
and Ors

...Respondents

...

Mr. H. V. Tungar, Advocate for the Applicants.

Mr. D. P. Deshpande, Advocate for the Respondent No. 1.

...

CORAM : R.M. JOSHI, J

DATE : MARCH 08, 2023

PER COURT :

1. The applicants are the original defendant nos. 1 and 2 in R.C.S. No. 288/1999 filed by the Respondent No. 1 (Original Plaintiff) for partition and separate possession and half share of the agricultural land properties mentioned in paragraph 1 of the Application. According to the Applicants, R.C.S. No. 288/1999 was partly decreed by the learned C.J.J.D, Renapur on 26.09.2002 and it was declared that the Defendant Nos. 1 and 2 are having 1/3rd share each in the agricultural lands and house properties except 31 R land from the

block no. 9 purchased by Defendant No. 1.

2. Being aggrieved and dissatisfied by the said judgement and decree, original plaintiff preferred being R.C.A. No. 193/2002 whereas original defendant nos. 1 & 2 had filed cross-objection in the said Appeal. The said First Appeal was dismissed and cross-objection filed by the Defendant Nos. 1 and 2 came to be allowed. Present second appeal is preferred by the original plaintiff being aggrieved by the judgement passed by the first appellate Court.

3. In Civil Application No. 5236/2004, by order dated 11.01.2008, this Court restrained present Applicants from disposing or creating third party interest of whatsoever nature in suit property. It is contended by Applicants that original plaintiff claims half share in the suit properties. According to them the lands are irrigated lands and they have submitted proposal for crop loan to Latur District Central Co-operative Bank. However, concerned Officer required Applicants to repay the entire crop loan and then to seek permission of this Court for sanction of crop loan for the present year for Rs. 3,50,000/-. It is stated

that in view of order of this Court dated 24.07.2006, in order to avail crop loan, the Applicants need relaxation / modification of the said order.

4. Learned Counsel for the Applicants drew attention of this Court to the orders passed by this Court dated 27.11.2013 and 14.07.2022 whereby the condition of order of injunction was relaxed to the extent of permitting the Applicants to raise crop loan against execution of the mortgage of the suit land to the extent of half share. It is submitted that the crop loan so obtained has been repaid before the next crop season and there is no breach of order committed by Applicants.

5. Learned Counsel for the original plaintiff opposed the said contention mainly on the ground that it is because of filing of these Applications, hearing of the Appeal is delayed. He drew attention of this Court to the statement made by the learned Counsel for the Applicants showing his readiness for hearing the Appeal finally. He expects that the appeal is heard at the earliest.

6. There is no dispute about the fact that the contesting parties herein are father and sons. There is no dispute about suit properties being their ancestral properties. The right of the Applicants at least to some extent in the suit properties is not in dispute. No doubt, this Court has passed order restraining the Respondent not to create any third party interest of whatsoever nature in the suit property, however, considering the importance of crop loan for an agriculturist and the amount of loan involved, there is no reason not to relax/modify condition of order dated 24.07.2006. Pertinently, on previous two occasions when such modification is allowed, the Applicants herein have not taken disadvantage thereof and have repaid the loan in time.

7. In circumstances, I find no reason for not allowing the Application. In the result, the following order is passed:

O R D E R

- a) The Application is allowed in terms of prayer clause 'B' & 'C'.
- b) The Applicants are permitted to raise crop loan as execution to the mortgage of the

suit land to the extent of half share.

- c) The crop loan shall be for a period of one year.
- d) The amount of loan shall not be more than Rs. 3,50,000/- for each Applicant.

(R.M. JOSHI, J.)