

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

**CIVIL APPLICATION NO.6678 OF 2022
IN SA/430/2019
WITH
CIVIL APPLICATION NO.16171 OF 2022**

**NAMDEV DAULATRAO SURYAWANSHI AND ANOTHER
VERSUS
SANJAY RAGHUNATHRAO MATLAKUTE**

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Mr. V.D. Salunke, Advocate h/f Mr. S.K. Chavan, Advocate for applicants
Mr. K.P. Rodge, Advocate h/f Mr. P.G. Rodge, Advocate for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 03rd JANUARY, 2023

PRONOUNCED ON : 03rd MARCH, 2023

ORDER :

1 Present application i.e. Civil Application No.6678 of 2022 has been filed for injunction and it is along with the Civil Application No.16171 of 2022 for modification/review of the order passed by this Court on 11.02.2021.

2 The Second Appeal is admitted by this Court by order dated

11.02.2021 and substantial questions of law have been framed. There was a separate application for injunction i.e. Civil Application No.8960 of 2019 and it was observed that since no evidence was produced by the applicants that they had sought interim injunction through the proceedings and even after the pronouncement of the Judgment and Decree passed by the First Appellate Court it was held that no case is made out for grant of injunction.

3 Heard learned Advocate Mr. V.D. Salunke holding for learned Advocate Mr. S.K. Chavan for applicants and learned Advocate Mr. K.P. Rodge holding for learned Advocate Mr. P.G. Rodge for respondent.

4 It has been pointed out that in fact application Exh.5 was filed in Regular Civil Appeal No.101/2011 and Regular Civil Appeal No.102/2011 by the present appellants to challenge the Judgment and Decree passed in Regular Civil Suit No.155/2007 as well as Regular Civil Suit No.364/2006 before the learned Principal District Judge, Parbhani. Now, the copy of the said order has been produced showing that on 26.09.2011 that application came to be allowed, execution of Judgment and Decree passed by the Trial Court in Regular Civil Suit No.155/2007 was stayed and the respondents in Regular Civil Appeal No.102/2011 i.e. present respondents were restrained from causing obstruction to the peaceful possession and cultivation of the

appellants/plaintiffs till the final disposal of the appeal. Learned Advocate Mr. V.D. Salunke holding for learned Advocate Mr. S.K. Chavan now points out the order passed by this Court on 02.08.2019, in which it was ordered that “until the further orders from the Court, possession of the appellants/plaintiffs over area admeasuring 01 H 82 R out of Gat No.491 of village Singnapur, Tq. & Dist. Parbhani, shall not be disturbed.” This order was not specifically extended thereafter, but the wordings and the tenor appears to be that there should be specific order for dismissing application or rejection of the injunction. On this background, it is stated that the order passed by this Court in Civil Application No.8960 of 2019 dated 11.02.2021 deserves to be reviewed.

5 Learned Advocate for the respondent has vehemently objected the application and submitted that the said application is not maintainable as it was not pointed out on the day of hearing that after the dismissal of the appeals any further order was sought. The appeals came to be dismissed on 08.05.2019 and this Court passed the order on 02.08.2019. When no protection was sought in between, the injunction could not have been granted. Further, both the Courts below have given findings in favour of the respondent as the appellants herein have failed to prove that their possession over the suit property has been obstructed. When the possession is not

obstructed, there is no question of grant of injunction. No case is made out for review.

6 At the outset, it is to be noted that review is maintainable if there is error apparent on the face of the record. It may be in respect of a fact which was lost sight by the Court. The case in both the matters deserve to be considered for a limited purpose once again. The appellants in both the Second Appeals are the same i.e. they are plaintiffs in Regular Civil No.364/2006 and defendants in Regular Civil Suit No.155/2007. Both the matters were before learned Joint Civil Judge Senior Division, Parbhani. Correspondingly the respondent No.1 in the Second Appeal was the original defendant and plaintiff in respective cases. Regular Civil Suit No.364/2006 came to be dismissed, whereas Regular Civil Suit No.155/2007 came to be decreed by the Lower Court on 16.09.2011. The two appeals arising out of those two decrees were decided by learned Principal District Judge, Parbhani. Both the appeals were dismissed on 08.05.2019. Hence, the second appeals. As aforesaid, the Second Appeals have been admitted and substantial questions of law have been framed. If we consider the facts in Regular Civil Suit No.364/2006 at that place the suit property was admeasuring 01 H 82 R from Gat No.491, for which plaintiff as owner and possessor was seeking declaration. Further, declaration was in respect of sale deed which was

executed by defendant No.2 in favour of defendant No.1 to the extent of 13 R from the same Gat number as null and void and not binding on their rights. Whereas suit property in Regular Civil Suit No.155/2007 was Gat No.491, totally admeasuring 13 R situated at village Singnapur, Tq. Parbhani. Even as regards 01 H 82 R land out of Gat No.491 was concerned, the Courts below have held that the present appellants are the owners and possessors, however, the injunction was rejected on the ground that the obstruction by defendant No.1 has not been proved. This Court by order dated 02.08.2019 had protected the possession of the plaintiffs over said 01 H 82 R land from Gat No.491 of village Singnapur, Tq. Parbhani. In view of the said order being now pointed out as well as Exh.5 which was preferred by the present appellants before the learned Principal District Judge, Parbhani was allowed and the respondents therein were restrained from causing obstruction to the peaceful possession to the appellants. The order passed by this Court on 11.02.2021 deserves to be modified/reviewed. It is not the case that the review is in disguise to appeal but as certain facts were not brought to the notice of this Court as well as this Court had not taken into consideration the earlier order dated 02.08.2019 due to inadvertence, hence, the Civil Application No.6678 of 2022 with Civil Application No.16171 of 2022 deserves to be allowed. The delay of 415 days caused in preferring the Civil Application for review deserves to be condoned.

7 For the aforesaid reasons, following order is passed.

ORDER

1 Civil Application No.6678 of 2022 with Civil Application No.16171 of 2022 stands allowed. The delay of 415 days caused in preferring the civil application for review stands condoned.

2 The order passed by this Court on 11.02.2021 in Civil Application No.8960 of 2019 in Second Appeal No.430 of 2019 is hereby reviewed and modified as follows :

- i) The possession of the appellants over area admeasuring 01 H 82 R out of Gat No.491 of village Singnapur, Tq. & Dist. Parbhani shall not be disturbed by the respondent or anybody claiming through him, till the final disposal of the appeal.

(Smt. Vibha Kankanwadi, J.)