

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

**CIVIL APPLICATION NO.16172 OF 2022
IN SA/593/2019**

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 has been filed for getting delay of 413 days in preferring modification/review of the order passed by this Court on 11.02.2021. For the reasons stated in the application, the delay stands condoned, however, in the same application the prayer clause 'C' submits that the order passed by this Court on 11.02.2021 in Civil Application No.13201 of 2019 preferred in Second Appeal No.593 of 2019 be modified/reviewed.

2 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.

3 The Second Appeal came to be admitted by a common order in Second Appeal No.430 of 2019 and Second Appeal No.593 of 2019 on 11.02.2021 and substantial questions of law have been framed. Learned Advocate Mr. V.D. Salunke is now pointing out order passed below Exh.5 in Regular Civil Appeal No.101/2011 and Regular Civil Appeal No.102/2011 by the learned Principal District Judge, Parbhani, wherein respondents in Regular Civil Appeal No.102/2011 were restrained from causing obstruction in the peaceful possession and cultivation of the appellants/plaintiffs till final disposal of the appeal, when it was before the learned Principal District Judge. Regular Civil Appeal No.102/2011 was preferred challenging the Judgment and Decree in Regular Civil Suit No.364/2006 and upon the dismissal of both the proceedings the Second Appeal No.430/2019 has been preferred. However, as regards the other proceeding i.e. Regular Civil Suit No.155/2007 is concerned, Regular Civil Appeal No.101/2011 was preferred and now the Second Appeal challenging both the decrees is Second Appeal No.593 of 2019. It has been tried to be contended that this Court vide order dated 02.08.2019 had granted the interim relief and that ought to have been

confirmed by this Court when the appeal was admitted. Learned Advocate for the respondent herein objects for modification of the said order in Civil Appeal No.13201 of 2019.

4 Perusal of the impugned Judgments of the Lower Court would show that the property in dispute in Regular Civil Suit No.155/2007 was admeasuring 13 R land from Gat No.491 which was stated to have been purchased by the present respondent from one Vitthal Pandurang Khupse on 30.07.2003. It will not be out of place to mention here that the other appeal i.e. Second Appeal No.430 of 2019 challenges the Judgment and Decree in Regular Civil Suit No.364/2006, wherein the suit property was admeasuring 01 H 82 R land from the same Gat number. Therefore, the properties in both the cases was posed to be different and it was held by both the Courts that the present appellants in their suit have proved their possession over land admeasuring 01 H 82 R only. This Court also while passing the order on 02.08.2019 protected the possession of the appellants only to the extent of 01 H 82 R and that order came to be passed in Civil Application No.8960 of 2019 in Second Appeal No.430 of 2019 only. There was no such order passed by this Court in respect of protection of the possession to the extent of 13 R separately from Gat No.491. Under such circumstance, the order passed by this Court on 11.02.2019 in Civil Application No.13201 of 2019 in Second

Appeal No.593 of 2019 cannot be modified. There is no error on the face of record in respect of that order. Hence, this application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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