

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

945 WRIT PETITION NO.13597 OF 2019

**SHRIRANG GYANOJI KAMBLE
VERSUS
SUMAN PRAKASH KAMBLE AND OTHERS**

...
Advocate for Petitioner : Mr. Parag Vijay Barde
Advocate for Respondent Nos.1, 3 to 7 : Mr. T.M. Venjane
...

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 06-01-2023**

PER COURT :

. Heard the learned Counsel appearing for the parties.

2. The grievance of the petitioner is that CMA No 95 of 2018 seeking to set aside the abatement has not yet been decided by the Trial Court. As the legal heirs of the original plaintiff - Shardabai in R.C.S. No.103 of 2010, who expired during the pendency of the suit on 30.05.2011, are not brought on record, the Trial Court passed an order on 12.09.2011 and disposed of the suit as abated. Subsequently on 16.11.2011 an application was moved by the petitioner seeking recalling of the abatement order and for restoration of the suit which has now been renumbered as C.M.A. No.95 of 2018. During the pendency of the said application, the petitioner made an application below Exh.79 for grant of status-quo as the respondents were intending to alienate the suit property

against which the respondents preferred an application below Exh.80 for vacating order of status-quo. The order of status-quo was continued intermittently and by order of this Court dated 11.11.2019 the ad-interim protection of status-quo has been continued till date.

3. Learned counsel for the respondents vehemently submits that the order of *status quo* has been obtained by the petitioner by suppressing the earlier order of rejection of *status quo*.

4. It is not in dispute that the suit property has been alienated by the original defendant and the application for setting aside abatement is of the year 2011, which has not yet been adjudicated by the trial court in view of the interlocutory applications which have been filed from time to time. As such, there is no progress in the suit. Considering the above, since the limited issue arises as regards the consideration of the application for setting aside the abatement and for condonation of delay of one month and four days, it is in the interest of justice that the impugned order be set aside and the application being C.M.A. No.95 of 2018 be heard by the trial Court. Hence, the following order.

ORDER

(i) The impugned order dated 18.09.2019 is hereby quashed and

set aside.

(ii) The Civil Judge Senior Division, Udgir is directed to hear and decide the C.M.A. No.95 of 2018 as expeditiously as possible and in any event within a period of six weeks from today.

(iii) Till the decision in C.MA No.95 of 2018, the interim protection of status quo granted by this Court be continued.

. Writ petition is disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)