

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION NO. 53 OF 2018
IN
FIRST APPEAL NO. 38 OF 20018**

Yeshwant Laxman Pai Raikar & anr.	... Applicants
<i>Versus</i>	
Laxman V. Singbal & 2 Ors.	... Respondents

Mr. J. J. Mulgaonkar, Advocate *for the Applicants.*

Mr. V. P. Thali, Advocate *with Mr. R. Prabhugaonkar,*
Advocate for Respondent nos. 1(a), 1(b), 2 and 3.

CORAM: M. S. SONAK, J
DATED: 8th December, 2023

ORAL ORDER

1. Heard Mr. Mulgaonkar, learned Counsel for the Applicants and Mr. Thali, learned Counsel for the Respondent nos. 1(a), 1(b), 2 and 3.

2. The accompanying First Appeal against Judgment and Decree dated 31.08.2017, is already admitted. By this Judgment and Decree, the trial Court decreed Special Civil Suit no. 13 of 2006 and directed the Appellant to execute a Sale Deed in favour of the Respondent in respect of the suit property.

3. Now the Appellants-Original Defendants seek interim relief to stay the implementation of this Decree.

4. Mr. Thali pointed out and even otherwise, there is no dispute that the Appellant has received an amount of Rs.45,00,000/- from the Respondents towards the sale of the suit property. This amount was paid in the year 2004. Further, Mr. Mulgaonkar submits that the possession of the suit property is also with the Appellants and, therefore, the impugned Decree requires the Appellants to hand over the possession of the suit property to the Respondents/Plaintiffs.

5. Thus, the position is that the Appellants are using the amount of Rs.45,00,000/- from the year 2004 and are also enjoying the possession of the suit property.

6. Since the Appeal is already admitted, interim relief can be granted restraining the implementation of the impugned Judgment and Decree. However, such relief cannot be granted unconditionally.

7. Mr. Thali submits that the amount of Rs. 45,00,000/- will fetch interest of almost Rs.40,000/- per month. He further submits that the suit property admeasures 8470 square metres. Therefore, the Appellants must be directed to deposit each month some substantial amount. Mr. Thali submits that if ultimately this Appeal is dismissed, the Respondents must not be forced to file additional proceedings for recovery of amounts for the deprivation of the possession of the suit property.

8. Mr. Mulgaonkar submits that the suit property is situated in Nagueshi and, therefore, the Appellant could deposit an amount of Rs.10,000/- per month in this Court if directed.

9. In my judgment, the Appellants must deposit an amount of Rs.50,000/- each month commencing from the date of the impugned Decree. This is because the Appellants have not only retained the amount of Rs.45,00,000/- from 2004, further they continued to be in possession of the suit property. If ultimately the Appeal is dismissed, the Respondents must be indemnified for the losses incurred by them. As noted earlier, the Respondents' suit has already been decreed by the trial Court.

10. Accordingly, this Civil Application is disposed of by making the following order :

(a) The execution of the impugned Judgment and Decree dated 31.08.2017 is stayed pending the disposal of this Appeal.

(b) The above stay is subject to the condition that even the Appellants must not transfer, alienate, part with possession or otherwise create any third party rights to the suit property. However, the Appellants must also not change

the nature of the suit property by putting up any construction on it, etc.

(c) The Appellants must deposit in this Court an amount of Rs.50,000/- on or before the 5th day of each month.

(d) The arrears from 01.09.2017 till date, should be deposited within three months from today.

(e) However, the first deposit of Rs.50,000/- should be made on or before 05.01.2024.

(f) In case of any two consecutive or non-consecutive defaults, this interim order shall stand vacated without further reference to this Court.

11. Civil Application is disposed of in the above terms with no orders as to costs.

12. Copy of this order must be retained in the First Appeal file.

M. S. SONAK, J

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