

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 619 OF 2023
IN
CIVIL APPLICATION NO. 1734 OF 2013
IN
FIRST APPEAL NO. 1447 OF 2004

Mrs. Pushpa D. Lavana

...Applicant/
Respondent No.2B(i)

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2023.12.07
10:28:44 +0530

In the matter between:

Rewachand L. Ramchandani(since deceased)
through Legal Heirs & Ors.

... Appellants

Versus

Hemantkumar Chaganlal Lavana and Ors.

...Respondents

Mr. Narendra Walawalkar, Senior Advocate a/w Ms. Devyani Deshmukh and Ms. Meetali Mendhe i/b M/s. Solomon & Co. for the Applicant/original Respondent No.2B.

Ms. Pratibha Shelke i/b Suryajeet Chavan for the Appellants.

Mr. Anup Mohanlal Motwani, Appellant No.2 present.

Mr. Ravi Dadu Kale, PoA of Appellant No.2 present.

CORAM : M.M.SATHAYE J.

DATE : 5th DECEMBER 2023

PC. :

1. Leave to amend to place public notice dated 21.10.2023 on record.

2. This is an application for appointment of Court Receiver or any other fit person as such, in respect of suit property bearing Survey No. 40/1 (now Gat No. 35) admeasuring 9 Acre and 20 guntas of village Kune, Taluka Maval, District Pune.

3. Heard Mr. Walawalkar, learned senior counsel for the Applicant and Ms. Shelke, for the original Appellants.

4. A brief summary of the facts necessary for deciding this application is as under. By Judgment and Decree dated 19.08.2004, the suit filed by the present Applicant's predecessor along with other Plaintiffs (Special Civil Suit No. 445/1991) was decreed and original Defendants No.2/Appellant No.2 in the present appeal was directed to deliver vacant and peaceful possession of the suit property to the Plaintiffs including predecessor of the present Applicant.

5. By the said Judgment and Decree, the conveyance executed by original Defendant No.1(Mr. Ramchandani) in favour of Defendant No.2 (present Appellant No.2 Anup Mohanlal Motwani) in respect of the suit property was declared as without authority and not creating any right, title and interest in favour of the Appellant No.2.

6. In this set of facts, the original Defendants carried the matter in above first appeal, which was admitted on 10.01.2005. The record shows that on 04.07.2005, the interim application filed by the present Appellants/original Defendants, was allowed and the impugned decree dated 19.08.2004 was stayed during the pendency of the appeal, albeit on condition that the Appellants shall not create any third party interest and shall also not raise any loan as against the suit property. With this restriction, the appeal continued till 2012 when, under conditional order dt. 23.07.2012, four weeks' time was

granted for removal of certain office objections in the appeal and it was ordered that if the office objections are not removed within stipulated time, the appeal shall stand dismissed. It appears that, for non compliance with this conditional order, the appeal got dismissed.

7. On getting knowledge of the dismissal of the appeal, the legal heirs of the Appellant/Defendant No.1 as well as Appellant/Defendant No.2 filed restoration application (C.A. 1734/2013), which is still pending. This application is for restoration of the first appeal and for condonation of delay in filing that application. During pendency of this restoration application, it appears that the impugned Judgment and Decree was put to execution, at the instance of the legal heir of Plaintiff No.4, who is present Applicant (Ms. Pushpa D. Lavana).

8. The learned senior counsel for the Applicant, invited this Court's attention to bailiff report as well as panchnama both dated 09.11.2022 and pointed out that apparently when the Officers of the Court tried to execute the decree of possession, one Mr. Ravi Dadu Kale obstructed the execution claiming to be the Power of Attorney holder of the original Defendants and created ruckus at the suit property. This situation is borne out from the bailiff report. The learned senior counsel further submitted that the power of attorney holder cannot claim any right higher than the party itself and therefore, the said Ravi Dadu Kale had no business to object the execution of the impugned Decree. In addition to this, learned

senior counsel for the Applicant pointed out that the original Defendants/Appellants/Judgment Debtors had also sought to prolong the execution by filing an application below Ex. 38 under Section 47 of the Code of Civil Procedure, which came to be dismissed on 08.08.2022.

9. It is further brought to the notice of this Court that recently as on 21.10.2023, a public notice was issued in the local newspaper in respect of the part of the suit property (to the extent of about 4 Acres 50 gunthas, which is almost half of the suit property) and the said public notice asserts possession of certain third persons. Learned senior counsel for the Applicant submitted that the Applicant is taking independent action to raise her objection to the said public notice.

10. On these submissions, learned senior counsel for the Applicant has urged that appointment of Court Receiver is necessary as there is serious apprehension of imminent danger to the suit property, as the obstructions by different parties including third parties, may continue in the peculiar facts and circumstances of the case.

11. On the other hand, Ms. Shelke, learned counsel for the Respondent/original Defendant No. 2 submitted that in fact, her client himself is trying to protect the suit property against certain proceedings initiated by the third parties, who are alleged to be the legal heirs of Gangubai Goje who was a vendor of the Plaintiff. She

submitted that her client in fact initiated a civil suit seeking declaration that a sale deed executed between third persons in respect of part of suit property is not binding on Defendant No.2 and for permanent injunction. She submitted that her client's suit (Special Civil Suit No. 522/2008) was decreed on 31.07.2009. She further submitted that the said third party carried the matter in appeal before this Court which is dismissed on 19.04.2010. She further submitted that Appellant No. 2 has also raised objection to the said public notice issued at the instance of third parties dt. 21.10.2023. In view of these facts, it is submitted by Ms. Shelke that present Appellant / Defendant No.2 himself is trying to protect his possession of the suit property. It is submitted that therefore, there is no need to appoint the Court Receiver.

12. I have carefully considered the submissions of both the sides. In view of the aforesaid facts and circumstances, it is apparent that not only the present Applicant/deeree holder and Respondent/original Defendant No. 2 are disputing against each other, but certain third persons have also tried to stake claim in the suit property. In such circumstances, in my view, the suit property needs to be protected and therefore in the peculiar facts of this case, mere injunction or order of status quo may not be sufficient to protect the suit property.

13. Learned senior counsel for the Applicant has fairly submitted that Defendant No.2, who is presently in possession of the suit property, either through himself or through his power of

attorney, can continue as agent of the Court Receiver and he has no objection for the same.

14. Learned counsel for the Appellant/Defendant No. 2 on instructions from the Appellant/Defendant No. 2, who is present in the Court, submits that Defendant No.2 is ready to be appointed as an agent of the Court Receiver provided his possession is not disturbed.

15. Therefore, taking overall view of the matter, I find that this is a fit case for appointing Court Receiver. Therefore, the following order is passed:

ORDER

(i) Nazir of the Civil Court at Vadgaon is appointed as Court Receiver of suit property in its jurisdiction i.e. Survey No. 40/1 (now Gat No. 35) admeasuring 9 Acres and 20 gunthas at Village Kune, Tal. Maval, Dist. Pune which is subject matter of Special Civil Suit No. 445/1991.

(ii) The original Defendant No.2 Mr. Anup Mohanlal Motwani is appointed as an agent of the Court Receiver. Defendant No.2 is directed to execute necessary agreement of agency with the Court Receiver, within a period of two weeks from today.

(iii) It is clarified that presently Appellant/Defendant No.2 Mr. Anup Motawani shall bear the costs necessary for the appointment as an agent of the Court Receiver. However, this cost

will be adjustable at the time of final disposal of the Appeal as costs in cause.

(iv) The interim application is disposed of in the above terms. No order as to costs.

(v) All concerned to act on authenticated or digitally signed copy of this Order.

[M.M.SATHAYE,J.]