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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2518 OF 2019**

Mahadeo Bhikaji Mahabare ... Petitioner
vs.
Sadanand Bhikaji Mahabare and Ors. ... Respondents

**WITH
WRIT PETITION NO. 10349 OF 2019**

Sadanand Bhikaji Mahabare ... Petitioner
vs.
Mahadeo Bhikaji Mahabare and Ors. ... Respondents

Mr. V. S. Kapse a/w. Mr. Shailesh D. Chavan for the Petitioner
in WP/10349/2019 and Respondent No. 1 in WP/2518/2019.

Mr. Prabhakar M Jadhav for the Petitioner in WP/2518/2019.

Mr. V. S. Kapse i/b. Mr. Tushar Sonawane for Respondent nos.
2 to 5 in WP/2518/2019.

CORAM : SANDEEP V. MARNE, J.

DATED : 21 FEBRUARY, 2023

P.C. :-

1. Regular Civil Suit No. 221 of 2007 filed by the Plaintiff came to be decreed on June 8, 2015 restraining Defendants from interfering in the land in possession of the Plaintiff. Another relief granted by the Trial Court is to direct the Taluka Inspector of Land Records, Junnar to measure the respective share of parties to the suit and prepare a map accordingly.

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2. Aggrieved by the decree dated June 8, 2015 Petitioner had filed Regular Civil Appeal No. 27 of 2017. In that Appeal Petitioner filed application for stay of the decree passed by the Trial Court. By order dated December 7, 2018 the Appellate Court has rejected the application for stay.

3. The Petitioner in Writ Petition No. 2518 of 2019 is aggrieved by order dated December 7, 2018. When Writ Petition No. 2518 of 2019 came up before this court, an ad-interim relief was granted by restraining Respondent nos. 2 to 4 therein from taking any action against the Petitioner. Since Respondent no. 1 in Writ Petition No. 2518 of 2019 was not covered by the order dated January 18, 2019, Plaintiff pressed the execution proceedings for execution of the decree dated June 8, 2015. Respondent no. 1 filed an application for stay of execution proceedings which came to be allowed by the executing court by order dated August 3 2019.

4. The Plaintiff is aggrieved by stay of execution proceeding qua respondent no. 1 and has accordingly instituted Writ Petition No. 10349 of 2019. Thus the relief claimed by the Petitioner in Writ Petition No. 10349 of 2019 hinges squarely

on the outcome of Writ Petition No. 2518 of 2019. I accordingly proceed to decide the Writ Petition No. 2518 of 2019.

5. As observed above, the Trial Court has decreed the suit of the Plaintiff on June 8, 2015 granting twin reliefs of perpetual injunction from interfering in the plaintiff's possession as well as appointment of Taluka Inspector of Land Records, Junnar for measurement of Suit land and fixation of boundaries.

6. Mr. Jadhav, learned counsel appearing for the Petitioner submits that the Regular Civil Appeal No. 27 of 2017 in which decree of the Trial Court is under challenge is coming up for final hearing on February 24, 2023. He would therefore urge that the present petition can conveniently be disposed of by continuing ad-interim relief granted by this court on January 18, 2019 with a request to the Appellate Court to decide Regular Civil Appeal No. 27 of 2017 expeditiously.

7. While I do not see any difficulty in accepting submissions made by Mr. Jadhav, Mr. Kapse, learned counsel appearing for Respondent nos. 1 to 5 would submit that the Appellate Court can be requested to decide the Appeal in an expeditious manner, but the direction of the trial court for measurement of

the land need not be stayed. Ad-interim relief was granted by this Court on January 18, 2019 and the same has been continued for about four long years.

8. Learned counsel for the parties are *ad idem* that the Regular Civil Appeal No. 27 of 2017 is now ripe for hearing and is listed for arguments on 24 February 2023. It is in fitness of things if the Appeal Court takes up the appeal expeditiously for hearing. The stay to the direction granting perpetual injunction in favour of the plaintiff can continue during pendency of the Regular Civil Appeal No. 27 of 2017. However, I do not see any reason why the direction for appointment of Court Commissioner for measurement of land and fixation of boundaries should remain in suspension during decision of Regular Civil Appeal No. 27 of 2017. By mere measurement of the land, no prejudice as such would be caused to the Petitioner herein.

9. Since Writ Petition No. 2518 of 2019 is being disposed of with a request to the Appellate Court to decide the Regular Civil Appeal No. 27 of 2017 by partially continuing the ad-interim relief granted by this Court, the relief claimed by the Petitioner in Writ Petition No. 10349 of 2019 would no longer

survive. I accordingly proceed to pass the following order :

(i) The Appellate Court is requested to expedite the hearing of the Regular Civil Appeal No. 27 of 2017 and to make an endeavour to decide the same in an expeditious preferably within four months from today.

(ii) During pendency of the Regular Civil Appeal No. 27 of 2017, direction no. 2 in operative portion of the judgment and decree dated June 8, 2015 shall remain stayed.

(iii) However, there shall not be any stay with regard to direction no. 3 in the operative portion of judgment and decree dated 8 June 2015. The exercise in so far as direction no. 3 shall be carried out and the measurement map prepared by the Taluka Inspector of Land Records, Junnar shall be placed before the Appellate Court and which can be taken into consideration by the Appellate Court while deciding the Appeal. However, during pendency of the Appeal, no further steps shall be taken by the parties on the basis of the measurement map so submitted before the lower Appellate court.

(iv) With the above directions Writ Petition No. 2518 of 2019 and Writ Petition No. 10349 of 2019 are disposed of.

(SANDEEP V. MARNE, J.)