

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7963 OF 2023

Sulochana Govind Zagade Dec. thr. LHRS
Vandana Bhaskar Zagade & Ors. Petitioners

Vs.

Sunanda Vishwas Chavan (Decd.) thr.
LHRS Anil Vishwas Chavan & Ors. Respondents

Mr. Manish Pitale for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 5th JULY 2023.

P. C.

1. Heard.

2. By this petition the challenge is to the order dated 13/3/2023 passed by the District Judge in RCA/67/2017 directing the parties to maintain status quo in respect of the property. Appeal arose out of judgment and decree dated 19/4/2017 decreeing the RCS No.14/1997 preferred by the predecessor of the petitioners for injunction.

3. As against the judgment and decree, RCA/67/2017

was preferred by the original defendant. In the said proceedings application came to be filed on behalf of the petitioners under Order 22 Rule 3(2) and under Order 22 Rule 4(3) read with 151 of C.P.C. stating that the appellant has expired on 15/11/2020 and the legal representative are not brought on record and further that petitioner No.1-Bhaskar Govind Zagade has also expired and as such appeal stands abated against Bhaskar Govind Zagade. In the said appeal, application was preferred by legal heirs of the deceased appellant for bringing legal heirs on record. It is stated that although these applications were pending no orders were passed thereon.

4. Application came to be filed by the legal heirs of the deceased appellant under Order 39 Rule 1 and 2 against the petitioners herein claiming that during the pendency of the appeal, the petitioners are disturbing the possessions of the appellant over the suit land and as such sought restrain orders. The impugned order arise out of the said application.

5. Heard Mr. Manish Pitale, learned counsel for the petitioners.

6. Learned counsel appearing for the petitioners submits that the applications under Order 22 Rule 3(2) and under Order 22 Rule 4(3) were pending for adjudication and neither legal heirs of the deceased appellant were brought on record nor abatement as regards petitioner No.1-Bhaskar Govind Zagade was set aside. In spite of the said position, the District Judge has proceeded with the hearing of the application under Order 39 Rule 1 and 2 of CPC and directed the parties to maintain status quo till final decision of the appeal.

7. Considered the submissions.

8. On query put by this Court whether reply was filed to the application filed by legal heirs of deceased under Order 39 Rule 1 and 2 of C.P.C., this Court is informed that no application was filed, only oral arguments were advanced. It appears that the submissions which are now sought to be raised before this Court, do not find place in the impugned order and in the absence of any reply to the application opposing the prayers, the trial Court cannot be presumed to be aware of the pendency of the previous

applications. The petitioners is expected to file appropriate reply to the application seeking restraining orders. The application in question was filed on 15/1/2023 and the impugned order has been passed on 13/3/2023. It is thus evident that there was sufficient time for the petitioners to file reply. As there was no reply filed indicating that the previous application filed by legal heirs of the deceased appellant as well as pointing out the abatement, there is no infirmity as the District Judge has considered the contentions of both the parties and have directed the parties to maintain status quo.

9. Learned counsel for the petitioners apart, from the said submission, has not been able to point out any perversity in the findings of the appellate Court. Submissions which are now sought to be raised before this Court do not form part of the record of the appellate Court by way of reply to the application. There is no reason to interfere with the impugned order.

10. In view of the above, the writ petition is devoid of merits and stands dismissed. Liberty to the petitioners to move the

District Judge for vacating the order by filing appropriate application.

SHARMILA U. DESHMUKH, J.