

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3858 OF 2019
IN
FIRST APPEAL NO.1795 OF 2019**

Abdullatif Ismail Kagadi
(Deceased) and Ors.

.....Applicants/Appellants

Vs.

Jamila Riyajoddin Kagadi
(Deceased) and Ors.

.....Respondents

**WITH
INTERIM APPLICATION NO.2265 OF 2023
WITH
INTERIM APPLICATION NO.2239 OF 2023
IN
FIRST APPEAL NO.1795 OF 2019
WITH
CONTEMPT PETITION NO.161 OF 2023
IN
FIRST APPEAL NO.1795 OF 2019**

Mr. Shrikrishna Ganbavale a/w. Mr. Kush M. Lahankar for applicants in IA/3858/2019, IA/2265/2023 and CP/161/2023 and for appellants in FA/1795/2019.

Mr. Vivek Salunke a/w. Mr. Ajinkya Jaibhave for respondent nos.1 to 6.

Mr. Mukul Taly a/w. Ms. Sayali Gharpure for respondent no.13.

Mr. Ramesh Soni a/w. Mr. Mustafa Kachwala and Ms. Ketki Pansare i/b. Kachwala Misar and Co. for respondent nos.15, 16, 17 and 18.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.
DATED : 23rd MARCH 2023**

PC. :

CONTEMPT PETITION NO.161 OF 2023

1 This petition is accusing respondents of contempt of an order dated 15th November 2021. At the outset, Mr. Ganbavale stated that

respondents have filed a reply pending admission and he wanted to file a rejoinder.

2 When we informed Mr. Ganbavale that in a contempt petition first of all an affidavit in reply is not required until the petition is admitted and rejoinder also cannot be as a matter of right, Mr. Ganbavale informed the Court that this Court has passed such directions on 7th February 2023. We read the order of 7th February 2023 passed by the same Bench and we observed that no such directions have been passed. Thereafter, we proceeded to hear Mr. Ganbavale on the petition. Mr. Ganbavale states that this Court in its order of 15th November 2021 at paragraph 4 has noted “The proceedings before the Commissioner appointed under Order 26 Rule 13 are stayed”.

3 This is a dispute between the family members and there was a preliminary decree for partition that was passed by the Trial Court. Appellants are impugning that order. In the meanwhile, the Commissioner under Order 26 Rule 13 came to be appointed. The Commissioner has not done anything after the impugned order was passed. In the meanwhile, respondent nos.1 to 6 have sold their interest to respondent no.13. Respondent nos.1 to 6 have sold their interest without the land being partitioned and respondent no.13 has purchased the same with all risks attached. In our view, there is no case for contempt made out.

4 Petition dismissed.

5 Mr. Ganbavale requests for two weeks time to file rejoinder in Civil Application No.3858 of 2019 and Interim Application No.2265 of 2023.

6 Time granted. Rejoinder in Civil Application No.3858 of 2019 and Interim Application No.2265 of 2023 to be filed and copy served within two weeks from today.

7 Mr. Ganbavale also seeks two weeks time to file reply in Interim Application No.2239 of 2023.

8 Affidavit in reply in Interim Application No.2239 of 2023 to be filed and copy served within two weeks from today. Rejoinder, if any, to be filed and copy served within a week thereafter.

9 Civil Application No.3858 of 2019, Interim Application No.2265 of 2023 and Interim Application No.2239 of 2023 be listed for hearing on 25th April 2023.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)