



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CIVIL APPLICATION NO. 2899 OF 2022
IN FA/43/2017

WITH CIVIL APPLICATION NO. 168 OF 2017
IN FA/43/2017

NANDKUMAR SHRINIWAS POKALWAR AND ANR
VERSUS
NAMDEORAO SHANKARRAO BADADE

.....

Advocate for Applicant : Mr. Chillarge Subhash S.
Advocate for Respondents : Mr. S.S. Halkude

CORAM : Y.G. KHOBRADE, J.
DATE : 02.04.2024

PC.:-

1. Heard the learned counsels appearing for the respective sides at length.
2. The appellant/applicants have filed civil application no.168/2017 and prayed for stay to the effect and operation of the impugned judgment and decree dated 07.09.2016 passed in Special Civil Suit No.142/2010 by the learned 4th C.J.S.D. Latur, whereby the suit of the respondent/plaintiffs was decreed and the defendant no.1. i.e. the present appellant no.1 was directed to execute sale-deed of the suit land in favour of the plaintiffs within a period of two months there from.

3. The defendants appellant/applicants who are office bearers of Mahatma Phule Shikshan Prasarak Sanstha, a registered trust under the Bombay Trust Act owned a suit property. The appellants/applicants canvassed that they have made prima facie ground and they may succeed in the appeal, hence prayed for stay to the effect and operation of the impugned judgment and decree.

4. Per contra the learned counsel appearing for the respondent-plaintiffs submits that on 09.01.2017 this Court already passed an ad interim order and stay to the extent of possession. Since the matter is admitted and points are requires for consideration by this Court after hearing both the sides, therefore, I am of the view that the ad interim order granted on 09.01.2017 shall continue during the pendency of the appeal. The civil application is allowed.

5. In civil application no.2899/2022 the original plaintiffs / respondents prayed for temporary injunction restraining the non-applicants/original defendants from creating 3rd party interest or developing the suit property bearing Gut No.46/A of village Khadgaon ad-measuring 186 ft x 137 ft on the ground that the appellant/original defendants are trying to create 3rd party interest over the suit property and in case the non-applicants/original defendants create 3rd party interest in that

event their claim would become infructuous and it would cause irreparable loss to them.

6. Per contra the learned counsel appearing for the non-applicants submits that on 01.03.2022 this Court has already passed the ad interim order and directed both the sides to maintain status quo regarding possession of the property and creating 3rd party interest, therefore, prayed for passing of suitable order.

7. Since the suit for specific performance of contract has been decreed in favour of the original plaintiffs and in case the appellant defendants create 3rd party interest and hand over possession to third party in that event the respondent-plaintiffs would be deprived from enjoying the fruits of the decree. Therefore, considering the facts and circumstances of the case the ad interim order granted on 01.03.2022 passed by this court shall be in operation during the pendency of the appeal. The learned counsel appearing for the appellant undertakes to file private paper book within a period of two weeks. After the paper book is filed the place the first appeal for hearing on 18.06.2024.

8. Accordingly, both the civil applications are disposed of.

[Y.G. KHOBRAGADE, J.]