



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CIVIL APPLICATION NO. 8964 OF 2023
IN SECOND APPEAL NO. 385 OF 2023

DILIP S/O MAGAN MAVCHI AND OTHERS
VERSUS
MANUBAI NAHALYA MAVCHI

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Advocate for Applicants : Mr. Jiwan J. Patil
Advocate for Respondent : Mr. Ruchir S.Wani

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WITH
SECOND APPEAL NO. 385 OF 2023

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.03.2024

PER COURT :

1. Heard Mr. Jiwan J. Patil, learned counsel appearing for the applicants / appellants and Mr. Ruchir S. Wani, learned counsel appearing for the respondent at length.

2. By the present application, the applicants have prayed for grant of stay to the impugned judgment and decree dated 16.03.2023 passed in Regular Civil Appeal No. 8/2020 by the First Appellate Court arising out of judgment and decree dated 20.07.2020 passed in Regular Civil Suit No. 36/2018, by the learned Civil Judge Junior Division, Navapur, District Nandurbar.

3. It is needless to say that the appellants are the original plaintiffs and the respondent is the original defendant in Regular Civil Suit No.36/2018. For the sake of brevity, I would like to refer the parties to the present application in their original capacity.

4. The plaintiffs filed a Civil Suit and prayed for decree of declaration of ownership and permanent injunction on the ground that they are owners and are in possession of land bearing gut no. 183/A, admeasuring 2.06 R. situated at Kalamba. It is contended that originally suit land was acquired by them in succession and it was ancestral property of their ancestor Manya Mavchi, who had three sons namely Radtya, Ramji and Gona. Shri Radtya had only one son namely Magan. Shri Ramji had only one son namely Gorji. Gona Many had three sons namely Rayala, Revati and Dewaji. The plaintiffs are sons of Magan and grand sons of Radtya. The land bearing No.183-A came into the share of Devaji Gona, but said land was cultivated by father of plaintiffs' since last 20 years. According to the plaintiffs, defendant is not cousin of Devaji Gona and she had no relations with the said Devaji Gona. However, defendant in hand-in-glove with the public servants on 25.02.2005 got mutated his name in revenue record on the basis of forged 'Will Deed' of Devaji Gona.

5. The defendant filed written statement and denied claim of the plaintiffs. According to the defendant, Devaji Gona executed sale-deed in her favour. However, the defendant not pleaded said fact in her written statement.

6. After considering the evidence, the learned trial Court recorded finding that the defendant filed 'Will-Deed' Exhibit 33 but fail to produce evidence to prove the 'Will-Deed' within the meaning of Section 68 of the Evidence Act and the plaintiffs are cultivating the suit land and they are in possession. Therefore, the learned trial Court passed decree in favour of the plaintiffs. In appeal said findings have been reversed by the said First Appellate Court and observed that the plaintiffs failed to prove that they are the owner and in possession of the suit property.

7. On 10.10.2023 the Second Appeal has been admitted on the substantial questions of law framed in paragraph no.5 of the order and directed both the parties to maintain status-quo in respect of the suit property.

8. Considering the nature of dispute, it would be just and proper to continue interim order dated 10.10.2023 during the pendency of appeal. Both the parties shall maintain status-quo in regard to the suit property till decision of the appeal.

9. Accordingly, Civil Application is disposed of.

(Y. G. KHOBRADE, J.)

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