

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 50 OF 2019
WITH
CIVIL APPLICATION NO. 47 OF 2019
IN
SECOND APPEAL NO. 50 OF 2019**

Housabai w/o Kashinath Shinde
(Deceased) through LRs

.....Appellants

Vs.

Pandurang Krishna Pisal
(Deceased Thru LRs) Baba
Pandurang Through LRs

.....Respondents

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Mr. Rajaram Bansode for the appellants
Mr. Kuldeep U. Nikam for respondent nos. 2 and 4

CORAM : GAURI GODSE, J.

DATE : 7th AUGUST 2024

ORDER:

CIVIL APPLICATION NO. 47 OF 2019:

1. Heard learned counsels for the parties. This application is filed for seeking an order of interim injunction restraining the respondents from interfering with and disturbing the peaceful possession of the

applicants over the suit property described in paragraphs 1 and 2 of the plaint.

2. Second appeal is admitted on 8th March 2021 on the questions of law as recorded in the order.

3. Learned counsel for the applicants submits that the certificate under Section 24 of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the said Act') with regard to suit properties described at serial nos. 4, 5 and 6 of paragraph 1 of the plaint is issued in the name of plaintiff on 18th February 1970. He thus submits that the issuance of certificate itself makes it clear that the applicant is in possession of the said properties. He, therefore, submits that during the pendency of the second appeal, atleast plaintiff's possession on the said properties mentioned in certificate should not be disturbed. Learned counsel for the applicant also relies upon 7/12 extracts produced on record to claim exclusive possession of the suit property.

4. Learned counsel for respondents submits that since the date of filing of the suit in the year 1974, till date there is no such order directing protection of any alleged exclusive possession of the plaintiff

over the suit properties. He further submits that by order dated 16th July 1993 order was passed during the pendency of the first appeal directing respondents not to make any changes in the revenue record of the suit property regarding ownership. Learned counsel for respondent submits that suit is for partition and separate possession. Hence, plaintiffs claim of exclusive possession cannot be accepted. He, thus, submits that the respondents are agreeable to abide by the order dated 16th July 1993 passed during the pendency of the first appeal, till the second appeal is decided.

5. I have considered the submissions made by both parties. Perused papers of the second appeal. Applicants have filed the suit for partition and separate possession in the year 1974 in respect of the properties described in paragraph 1 of the plaint. It is not in dispute that certificate under section 24 of the said Act stands in the name of plaintiff in respect of the said properties described at serial nos. 4, 5 and 6 of paragraph no. 1 of the plaint. A perusal of the plaint indicates that the plaintiff herself has pleaded that the respondents were cultivating the suit property on her behalf. In fact, she has pleaded that respondents/defendants have encroached upon her rights in respect of the suit properties. Perusal of the Judgments of both the Courts does

not indicate that there is any finding recorded with regard to any exclusive possession of the plaintiff.

6. When the suit itself is for partition and separate possession, there is no question of accepting exclusive possession of the plaintiff over any of the suit properties at this stage. Though certificate under Section 24 stands in the name of plaintiff, a perusal of the pleadings as well as findings recorded by both the Courts indicate that there is dispute in respect of possession over the suit properties. Hence, at this stage, exclusive possession of any of the parties cannot be accepted. There is nothing on record to form a prima facie opinion about the exclusive possession of either of the parties. Hence, in the absence of any findings regarding exclusive physical possession of any of the parties, it is not possible to grant prayer for injunction as prayed by the appellants in this second appeal.

7. Since the second appeal is already admitted, revenue records with regard to the suit properties should not be changed during the pendency of the second appeal. Hence, by way of interim relief, during the pendency of the second appeal, none of the parties to the second appeal shall change the revenue record in respect of the suit

properties. The parties to the second appeal shall not create any third party interest and/or part with possession of the suit properties in favour of any third party during the pendency of the second appeal.

8. Civil Application is disposed of in the above terms.

9. By order dated 8th March 2021, admitting the second appeal, a statement is recorded on behalf of the appellants that the appellants do not press their claim in respect of Gat No. 1074.

10. Hence, the aforesaid injunction shall not operate in respect of Gat No. 1074 and the order of injunction would operate only so far as rest of the suit properties are concerned.

[GAURI GODSE, J.]