

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.2113 OF 2024

Ajit @ Ajaykumar Maruti Kadam (since
deceased) through Shakuntala Ajaykumar
Kadam and Ors.

.. Petitioners

Versus

Shubhash Keshav Patil and Ors.

.. Respondents

-
- Mr. Yuvaraj Gharal, Advocate for Petitioners.
 - Mr. Sandeep Koregave, Advocate for Respondent Nos.1 and 2.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 09, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Gharal, learned Advocate for Petitioners and Mr. Koregave, learned Advocate for Respondent Nos.1 and 2.
- 3.** Perused the praecipe dated 09.02.2024 and the copy of Writ Petition.
- 4.** Mr. Gharal, learned Advocate appears for the Petitioners in the present case. Praecipe is filed seeking extension of time of the stay granted by the learned Appellate Court in Miscellaneous Civil Appeal No.22 of 2022. Appeal of Defendants has been allowed against the order dated 18.11.2021 passed below Exhibit-5. The order dated 18.11.2021 was passed in favour of Plaintiffs. It is seen that the Plaintiffs have filed receipts rather some receipts which clearly show

the number of suit property for the year 2020 before the learned Trial Court as also the Appellate Court which have been duly taken cognizance of. Date of the receipts is subsequent to the filing of the suit proceedings. That apart, Plaintiffs have also filed several receipts which do not reflect number of the suit property.

5. Be that as it may, once Plaintiffs have *prima facie*, proved before the learned Trial Court that Plaintiffs are in possession of the property of which they are seeking specific performance in respect of the registered Agreement of the year 1975, the learned Trial Court has appreciated the same and passed order dated 18.11.2021. The learned Appellate Court while addressing the issue of possession in paragraph No.20 of the judgment dated 09.01.2024, at page No.84 of the Writ Petition has incidentally considered the aforementioned facts and noted the same. It is probably in that context that learned Appellate Court itself while passing judgment dated 09.1.2024 stayed its own order to permit the Plaintiffs to take appropriate remedy. Hence, the present Writ Petition.

6. Mr. Koregave appears on notice for the Respondents. He would argue that according to his instructions Defendants are in possession of the property. If that be the case it shall be open to the Defendants to show the same if so desired by filing an appropriate response to the Writ Petition. From the above mentioned reasons

prima facie, it is seen that Plaintiffs are in possession of the suit property.

7. Mr. Gharal would submit that there are standing sugarcane crops which are harvested by the Plaintiffs. In that view of the matter, the impugned judgment dated 09.01.2024 shall stand stayed. The Respondents i.e. Defendants are directed to file Affidavit-in-Reply by placing on record of such relevant material. Such Affidavit-in-Reply shall be filed within a period of four weeks from today. Rejoinder, if any, to be filed within a period of two weeks thereafter.

8. Stand over to **15th March, 2024**.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed by
HARSHADA
HANUMANT
SAWANT
Date: 2024.02.09
16:52:51 +0530