

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.350 OF 2020
IN
SECOND APPEAL NO.389 OF 2020**

Shantaram Parasharam Jadhav & Ors.Appellants/Applicants
V/S
Lilabai Rajaram Jadhav & Ors.Respondents

Mr. Manoj Patil i/b Mr. Ashish P. Pawar *for the Appellants/Applicants.*
Mr. Nitin Mulye *for Respondent No.4A to 4C.*

CORAM: SANDEEP V. MARNE, J.
DATE : 19 APRIL 2024.

P.C.:

1 The Civil Application is filed for seeking stay of the decree dated 30 August 2006 passed by Civil Judge Senior Division, Niphad in Special Civil Suit No.19 of 2003 as confirmed by the First Appellate Court by its decree passed in Regular Civil Appeal No.160 of 2012.

2 The Second Appeal has already been admitted by this Court by framing substantial question of law vide order dated 5 April 2023.

3 Perusal of the decree passed by the Trial Court would indicate that while the suit filed by the Plaintiffs as well as the Counter-Claim filed by Defendant Nos.1 to 3 are dismissed, the Counter-Claim filed by Defendant No.4 came to be allowed and Plaintiffs are directed to handover possession of the suit property described in the Plaint (para no.1A) to Defendant No.4.

4 It appears that Plaintiffs filed First Appeal No.2439 of 2006 before this Court challenging the decree of the Trial Court. Initially by order dated 11 October 2006 this Court granted *ad-interim* relief in favour of the Appellants by staying the decree of the Trial Court. However subsequently the *ad-interim* stay granted in favour of the Appellants came to be vacated by dismissing the Civil Application by order dated 19 April 2011.

5 Perusal of Memo of First Appeal filed by Appellants before this Court would indicate that no ground was raised for challenging the decree passed in the Counter-Claim. It also appears that while valuing the First Appeal, the same was valued at Rs.5,51,000/-, which included valuation of Rs.5,50,000/- for declaration and Rs.1,000/- for perpetual injunction. It appears that Defendant No.4 had valued the Counter-Claim at Rs.416/- for possession. Thus it is doubtful as to whether the First Appeal filed before this Court raised any challenge to the decree passed in Counter-Claim filed by Defendant No.4.

6 The same story continued before the First Appellate Court after First Appeal No.2439 of 2006 was transferred to the District and Sessions Judge, Niphad and numbered as Regular Civil Appeal No.160 of 2012. Though amended Appeal Memo was filed, no ground was apparently raised challenging the decree in Counter-claim filed by the Defendant No.4. There again Appeal remained valued at Rs.5,51,000/- which did not contain valuation of Rs.416/- in respect of decree of possession granted in the Counter-claim.

7 True it is that while filing the present Appeal, the Appellants have grown wiser and has now sought to include challenge to the decree passed in Counter-claim filed by Defendant No.4. Now the Second Appeal is valued at Rs 5,51,416/- which includes valuation of Rs.416/- by raising challenge to the degree of possession in Counter-claim filed by Defendant No.4.

8 In view of the fact the *ad interim* order granted in favor of the Appellants in First Appeal No.2136 of 2006 was vacated on 19 April 2011 coupled with the fact that the Appellants failed to include any ground of challenge in respect of decree for possession passed in the Counter-claim filed by the Defendant No.4, I am of the view that the decree passed by the Trial Court cannot be stayed during pendency of the present Appeal. The Appellants are apparently without any protection since 19 April 2011. It is prima facie doubtful as to whether they ever challenged the decree for possession in Counter-claim filed by Defendant No.4 before the First

Appellate Court. For these reasons, I am not inclined to stay the decree of the Trial Court during pendency of the present Appeal.

9 The Civil Application is accordingly rejected.

(SANDEEP V. MARNE, J.)