

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.795 OF 2024
IN
WRIT PETITION NO.992 OF 2024

Shankar Genu Murkute and Anr.

Petitioners
.. (Judgment Debtors)

Versus

Vitthal Genu Murkute

Respondent
.. (Decree Holder)

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- Mr. K. R. Maniyar, Advocate for Applicants.
 - Mr. A. N. Bagwade a/w. M. A. Thanekar and Mr. Sudarshan Naugare, Advocates for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024

P.C.:

1. Heard Mr. Maniyar, learned Advocate for Applicants and Mr. Bagwade, learned Advocate for Respondent.

2. Mr. Maniyar, learned Advocate for Applicants / Petitioners would submit that despite the decree dated 27.09.2018 having been passed for possession in Regular Civil Suit No.3959 of 2012, parallel suit being Regular Civil Suit No.4425 of 2012 seeking a declaration and injunction in respect of the same subject suit property is still pending.

3. I have impressed upon Mr. Maniyar, learned Advocate for Applicants / Petitioners to consider the position in law as to whether the decree dated 27.09.2018 is required to be challenged or to obtain

appropriate order in the pending Regular Civil Suit No.4425 of 2012. Unless, the Petitioner invokes the aforesaid two remedies, I have impressed upon Mr. Maniyar that I shall not be in a position to stay the order dated 22.08.2023.

4. Without opining anything on merits so as not to disturb the proceedings in the suit for declaration and injunction filed by Applicants / Petitioners, I have impressed upon Mr. Maniyar to obtain appropriate orders either from the Appellate Court in so far as the decreed Regular Civil Suit No.3959 of 2012 is concerned or approach the learned Trial Court seized with hearing of suit for injunction and declaration suit being Regular Civil Suit No.4425 of 2012. If no orders are obtained, I am not inclined to stay the order dated 22.08.2023. At the request of Mr. Maniyar, Applicants / Petitioners are granted one last opportunity of eight weeks from today to obtain appropriate orders.

5. It is clarified that if no orders are obtained then this Court shall not be in position to assist the Applicants / Petitioners. Hence, at present the order dated 22.08.2023 shall stand stayed only for a limited period of eight weeks from today and thereafter shall not stand extended at all. In the event if any order is passed by either the Appellate Court or the Trial Court hearing the parallel suit as delineated hereinabove, the execution proceedings will then be

governed accordingly. Parties shall bring the order dated 22.08.2023 to the notice of the Courts where appropriate Application is made.

6. Mr. Bagwade, learned Advocate for Respondent would submit that considering the delay that has occurred in the present case which is of more than five years and which is incidentally observed by the Executing Court while passing the impugned order dated 22.08.2023, the Applicants / Petitioners should be directed to secure the claim of the Respondent who is the Decree Holder. Such application can be made by the Decree Holder before the Court where the Petitioner shall make the appropriate application.

7. With the above directions, Interim Application and Writ Petition are disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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SAWANT

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