

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2922 OF 2024
IN
CRIMINAL APPEAL NO. 1041 OF 2021

Balasaheb Genaba Kingare .. Applicant

Versus

State Of Maharashtra And Ors. .. Respondents

...

Mr. Balasaheb G. Kingare, Applicant in-person.

Dr. Ashvini A. Takalkar, A.P.P. for the State/Respondent.

...

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th SEPTEMBER, 2024

P.C:-

1. The present Interim Application is taken out by Mr. Balasaheb Genaba Kingare seeking the following reliefs :

“A) The Honorable High Court be please to call record and proceedings with Respondents and pass order with police help for repairing of boundary marks as per the boundary of S. No. 44/11 and 44/12 fixed by map of M. No.9626/2014 dated 17/07/2015 as Applicant is using and possessing for more than 33 years.

B) The Cr. M. A. No. 392/2019 filed by Respondent No. 3 for releasing the property B

from attachment of property B as ruled out by Hon'ble Apex Court please be dismissed with exemplary cost."

2. The above application is filed in a Criminal Appeal which is already disposed off by the Division Bench on 21.03.2023, by recording that, what relief is sought by the Application (Exh-9) before the MPID Court, was something which could be considered and decided only by a Civil Court and not by a Criminal Court, and this was what the MPID Court had also observed while passing the impugned order on 13.11.2021.

The Division Bench categorically noted that the grievance of the Appellant is not about taking into consideration the boundaries already fixed in respect of the respective properties but it is about the wrong attachment of the properties resulting from failure to recognize the boundaries. In specific wordings, the Division Bench expressed as under :

"5. We are of the opinion that in the interest of justice, the Appellant needs to be granted further opportunity to make proper application with proper averments and pleadings and prayer clauses to the Special Court constituted under the MPID Act which we do so. We direct that if such an application is made, same shall be considered and decided by MPID Court in accordance with law and at the earliest, preferably within eight weeks from the filing of a fresh application, after giving a fresh opportunity of hearing to all the interested parties. This shall be done by the Trial Court

without being influenced by the observations made hereinabove and also the view already taken by Trial Court in its order dated 13.11.2021. The Appellant is accordingly relegated to the Special Court constituted under the MPID Act for redressal of his grievance.

6. Appeals are disposed of. All contentions of both the parties are kept open. No order as to costs.”

3. In the wake of the disposal of the Appeal, since on merits the Court refused to consider the Appeal, assailing the order passed by the MPID Court, we are left with no option than to decline the Interim Application, which seek the relief of repairing the boundary marks, as the Applicant is using and possessing the land for more than 33 years. Even this relief definitely is not within our province to grant and the Appellant deserve to be relegated to the Civil Court, for the very same reason, when his Appeal was disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)