



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.803 OF 2024
IN
FIRST APPEAL ST.NO.2898 OF 2024

Nikhilesh Laxmanprasad Sahu and others
VS.
Kishor Chhunilalji Mantri and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. J.J. Chandurkar, Advocate for appellants.

CORAM : G.A. SANAP, J.
DATE : 6th MARCH, 2024.

Heard learned Advocate for the appellants.

2. The appellants are seeking leave to challenge the judgment and decree in Special Civil Suit No.219/2019 passed by the 12th Joint Civil Judge Senior Division, Amravati. The suit was filed by respondent Nos.1 and 2 for specific performance of contract against respondent Nos.3 to 6, in respect of land bearing field Survey No.66/2-A admeasuring 0.52 R situated at Moujapeth, Amravati, Pragane, Badnera.
3. It is the case of the appellants that Madanlal Radhakisan Bang the predecessor in title of respondent Nos.3

to 6 had filed a Special Civil Suit No.209/1999 in respect of the above land and in the said suit amongst other the predecessor in title of the appellants was defendant No.3. The said suit was decreed. The declaration of ownership of the above property was granted in favour of Madanlal Radhakisan Bang. The predecessor in title of the appellants, Laxmanprasad Babulal Sahu challenged the said judgment and decree by filing Regular Civil Appeal No.39/2011 in the District Court, Amravati. It is stated that learned District Judge-1 Amravati by his common judgment and decree dated 25.02.2021 allowed the appeal filed by Laxmanprasad Sahu as well as Mahadev Shankarrao Bunde, defendant No.5 in the said suit and dismissed the Special Civil Suit No.209/1999 filed by Madanlal Radhakisan Bang, the predecessor in title of respondent Nos.3 to 6. The District Judge-1 Amravati held that Madan Lal Bang was not the owner of the property. Learned Advocate submits that Second Appeal filed against the said judgment and decree is *subjudice* before the High Court.

4. Learned Advocate submits that the suit for specific performance of agreement of the sale of the above land was filed by respondent Nos.1 and 2 against respondent Nos.3 to 6. The said suit has been decreed. It is stated that despite knowing that the predecessor in title of the appellants was

declared as owner of the said land neither he nor the present appellants were made a party to the said suit. Learned Advocate submitted that it was a collusive suit between respondent Nos.1 and 2 on one hand and respondent Nos.3 to 6 on the other hand. The intention was to deprive the appellants of their rights in the property.

5. On going through the record and facts noted above, I am of the view that leave to file the appeal needs to be granted.

6. Accordingly the leave to file the appeal is granted. The Civil Application No.803/2024 is accordingly allowed.

7. Appeal be registered.

FIRST APPEAL ST. NO.2898 OF 2024

1. Heard.

2. Issue notice to the respondents, returnable on 27.03.2024.

CIVIL APPLICATION ST. NO.2903 OF 2024

1. Heard.

2. Issue notice to the respondents.

3. Learned Advocate for the appellants submits that in order to protect the interest of the appellants, it is necessary to stay the execution of judgment and decree impugned in this appeal.

4. In view of the peculiar facts brought to the notice of this Court and recorded in the order for leave to appeal, it would be just and proper to protect the interest of the appellants.

5. In view of this, the effect and operation of the judgment and decree dated 08.01.2024 passed by 12th Joint Civil Judge, Senior Division, Amravati in Special Civil Suit No.219/2019 is stayed till next date.

(G. A. SANAP, J.)

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