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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.246 OF 2016

Chandrakant Bhagwat Shinde and Others

PETITIONERS

VERSUS

Sangeeta Sunil Kute and Others

RESPONDENTS

.....
Mr. D. M. Mane h/f Mr. A. N. Nagargoje, Advocate for Petitioners
Mr. Vinod Y. Bhide, Advocate for Respondents No.1 to 3
.....

[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 7th FEBRUARY, 2025

ORDER :

1. Petitioners are original Defendants No.1B to 1D in Regular Civil Suit No. 603 of 2000. Petitioners have challenged order dated 15th December, 2015 passed below Exhibit-29 in DMA. No. 20 of 2012 by District Judge-2, Sangamner, District - Ahmednagar, whereby the possession warrant issued against the Petitioners was stayed subject to deposit of Rs.15,000/- per month in the Appellate Court, on or before 7th day of each month.
2. Present Respondents No.1 to 3 have filed Regular Civil Suit No. 603 of 2000 against the Petitioners and others for declaration that, they are owners of the suit property bearing Gut No. 286 admeasuring 55 R and sale deed dated 23rd January, 1995 executed by Defendant No.2 in favour of Defendant No.1 is not

binding on them and Mutation Entry No. 798 is also not binding on them.

3. The suit was decreed and Mutation Entry No. 798 was declared illegal. It was further ordered that sale deed dated 23rd January, 1995, executed by deceased Bhimaji in favour of deceased Vastalabai is void. Defendants No.1A to 1E were directed to restore possession of the suit property to the Plaintiffs within 3 months from the date of the judgment. Inquiry as to the mesne profits was directed from the date of institution of the suit until the delivery of possession to the decree holder. Final decree in respect of mesne profit was to be passed in respect of the mesne profits in accordance with the result of the inquiry.

4. Judgment and decree in Regular Civil Suit No. 603 of 2000 was challenged by Petitioners by filing Regular Civil Appeal No. 50 of 2019 During pendency of the Appeal, Petitioners moved an application below Exhibit - 29 seeking stay to the issuance of the possession warrant. Stay was granted by the Appellate Court, however, subject to deposit of Rs.15,000/- per month, by order dated 15th December, 2015. The said order has been subject matter of challenge in the present Writ Petition.

5. It is the contention of the Petitioners as well as Respondents that the order impugned was issued pending

Appeal as well as stay application and application for condonation of delay.

6. During pendency of present Writ Petition, interim order came to be passed on 8th January, 2016 by this Court, whereby it has been directed that order dated 15th December, 2015 passed by District Judge -2 Sangamner, below Exhibit-29 in DMA No. 20 of 2012 to the extent it directs deposit of Rs.15,000/- per month shall remain stayed on the condition that Petitioners shall deposit an amount of Rs.5,000/- per month in the Appellate Court on or before 7th day of each month.

7. Thereafter, during pendency of the present Writ Petition, common order dated 25th March, 2022 came to be passed on Exhibits-16, 22 and 27 in Regular Civil Appeal No. 50 of 2019. By the said order, stay was granted to the decree till disposal of the Appeal. While passing the said order, reference has also been made to the interim order passed by this Court, wherein Petitioners are directed to deposit Rs.5,000/- per moth.

8. So far as Exhibit-22 is concerned, it was filed for relaxing the condition of depositing Rs.15,000/- per month. It is observed by the Appellate Court that since this Court has already considered the issue and has directed the Petitioners to deposit Rs.5000/- per month, the request for relaxing the condition of

deposit of Rs.15,000/- cannot be considered, in view of the order passed by this Court.

9. Therefore, a joint request is made that, the Writ Petition can be disposed of by continuing the interim order passed by this Court, directing the Petitioners to deposit Rs.5,000/- per month, till disposal of the Appeal.

10. Since it is already observed by the Appellate Court in its order that if the same arrangement is continued, the Petitioners would be vigilant for disposing of the Appeal as early as possible, in my opinion, it will be appropriate and in the interest of justice to continue with the interim arrangement made by this Court as per order dated 8th January, 2016 till disposal of Regular Civil Appeal No. 50 of 2019.

11. Accordingly, it is directed that the interim order dated 8th January, 2016 shall continue to operate till the disposal of the Regular Civil Appeal No. 50 of 2019.

12. In view of the above directions, Writ Petition is disposed of.

**[MANJUSHA DESHPANDE_]
JUDGE**

