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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1714 OF 2022

WITH

CIVIL APPLICATION NO. 369 OF 2020

IN

SECOND APPEAL NO. 248 OF 2017

WITH

CIVIL APPLICATION NO. 370 OF 2020

IN

SECOND APPEAL NO. 247 OF 2017

Ramchandra Maruti Megane

.....Applicant/Appellant

Vs.

Pandurang Rama Kashid and Ors.

.....Respondents

Mr. Pradeep Dalvi for the Applicant/Appellant.

Mr. Sushil Inamdar for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 13th JANUARY 2025

ORDER:

INTERIM APPLICATION NO. 1714 OF 2022

1. This application is filed by the appellant that is the original plaintiff seeking stay to the proceedings of miscellaneous application filed by defendant no.2 for restitution of possession.

2. Learned counsel for the appellant submits that the appellant is

the plaintiff, who purchased defendant no.10's share. Based on the sale deed the appellant filed suit for partition and separate possession which was decreed. The partition decree was challenged by defendant no.2. The plaintiff also challenged the decree as the relief of partition was granted in respect of only one property.

3. The first appeal preferred by the plaintiff was dismissed and defendant no.2's appeal was allowed.

4. In view of the decree passed by the first appellate Court, the suit for partition and separate possession stood dismissed.

5. Learned counsel for the appellant submits that in the meantime, the partition decree was executed and the plaintiff was put in possession. However, after the decree was set aside by the first appellate Court, defendant no.2 filed an application under Section 144 of Code of Civil Procedure for restitution of possession.

6. Learned counsel for the appellant submits that even if the suit for partition and separate possession results into dismissal, the plaintiff's rights based on the sale deed executed by defendant no.10 is not challenged. He therefore submits that in any case the plaintiff, i.e., the appellant would remain a co-sharer. He thus submits that if during the pendency of the second appeal, the possession order is passed in the

restitution application, serious prejudice would be caused to the appellant's rights. He therefore submits that during the pendency of the second appeal, the further proceedings of the restitution application be stayed.

7. Learned counsel for respondent no.2 submits that defendant no.2 is in possession of remaining part of the property through which he is getting sufficient income. He submits that if the second appeal is dismissed defendant no.2 would be entitled to restitution of the possession. He thus submits that if during the pendency of second appeal, the appellant is permitted to continue with the possession, he may be put to terms that he should pay a certain amount towards compensation to defendant no.2.

8. I have perused the papers of the second appeal. It is not in dispute that the plaintiff claims right in the suit property based on a sale deed executed by defendant no.10. The sale deed in favour of the plaintiff is not challenged by any of the co-sharer. Hence, in view of the sale deed in favour of the plaintiff he becomes a co-sharer of the property. Hence, even if decree for partition and separate possession passed by the trial Court in favor of the appellant stands set aside, in the event, the second appeal is dismissed, the plaintiff would still

continue to be a co-sharer in view of the sale deed in his favour. Hence, during the pendency of second appeal, defendant no.2, who is one of the co-sharer would not be entitled to seek restitution of possession.

9. In my opinion, in view of these peculiar facts and circumstances, if the proceedings for restitution are finally decided during the pendency of second appeal, it would cause prejudice to the plaintiff's rights and also result in multiplicity of proceedings.

10. Hence, during pendency of second appeal, further proceedings in the restitution application shall remain stayed.

11. The appellant (plaintiff) should not create any third party rights or part with possession of the property in his possession pursuant to the trial Court's decree.

12. For the aforesaid reasons, application is allowed in terms of prayer clause (b), subject to the applicant not creating any third party rights or parting with possession of the suit property, which is in applicant's possession pursuant to the trial Court's decree.

13. Interim Application is disposed of in aforesaid terms.

[GAURI GODSE, J.]