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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 14096 OF 2023
IN
SECOND APPEAL NO. 481 OF 2023

Mallesham Satyayya Manthen ... Applicant

vs.

Jayant Ambaji Kyatam ... Respondent

WITH
INTERIM APPLICATION NO. 14097 OF 2023
IN
SECOND APPEAL NO. 481 OF 2023

Laxminarayan s/o. Satyayya Manthen ... Applicant

vs.

Nagesh s/o. Yallaya Malyal ... Respondent

WITH
INTERIM APPLICATION NO. 14103 OF 2023
IN
SECOND APPEAL NO. 484 OF 2023

Laxminarayan s/o. Satyayya Manthen ... Applicant

vs.

Sidram s/o Sayanna Kyatam ... Respondent

WITH
INTERIM APPLICATION NO. 14101 OF 2023
IN
SECOND APPEAL NO. 483 OF 2023

Laxmibai w/o Mohan Balla ... Applicant

vs.

Chandrakant s/o. Vyankayya Shriram

... Respondent

Mr. Sandeep Phatak, Mr. Adhik Kadam for Appellants.

Mr. Kevin Pereira i/b. Mr. Chinmay Acharya for Respondent No.2.

Mr. Atul Damle a/w. Mr. Omkar Kulkarni for Respondent Nos. 3 and 4.

CORAM : GAURI GODSE, J.

DATED : 26th MARCH 2025

ORDER:

1. Heard learned counsel for the parties. These applications are filed in admitted second appeals. By these applications, the appellants have prayed for temporary injunction restraining the respondents from disturbing appellants' possession over the suit plots and restrain them from creating third party interest. All these appeals arise out of concurrent findings recorded against the appellants, disbelieving the appellants' claim of being in possession.

2. The suit for declaration of title and for injunction protecting possession is dismissed. Hence, these second appeals. The second appeals are admitted on the questions regarding appellants' title based on the registered sale deeds in respect of the plots sold pursuant to the permission for non agricultural use. Subsequent to the registration of the sale deeds the order converting the

agricultural plots into non agricultural plots is cancelled which has attained finality.

3. Both the courts have refused to grant injunction by holding that the appellants were unable to prove their possession pursuant to the description of the plots and the document of title relied upon by the appellants.

4. Learned counsel for the appellants relies upon the sale deeds to support their contentions that the appellants are in possession of the suit property. Learned counsel for the appellants submits that the title document which was never challenged, records that the appellants were put in possession of the suit plots. He, therefore, submits that during the pendency of the second appeals, the appellants' possession be protected. Learned counsel for the appellants relies upon sale deed of predecessor in title and sale deeds executed in favour of the appellants. He submits that the description in both the sale deeds clearly indicates that plot nos. 1 to 14 were purchased by the appellants' predecessor in title and out of those larger plots some plots were purchased by these appellants. He submits that, the description of the plots purchased by each of the appellants is clearly described in the respective sale deeds. He therefore, submits that the appellants have prima facie documents

to indicate that the suit properties were put in possession of the appellants. He, therefore submits that their possession is required to be protected.

5. Learned senior counsel appearing for the respondents opposes the grant of interim injunction. He submits that during the pendency of the suit or pendency of the first appeal there was never any interim protection granted in favour of the appellants. He therefore submits that in view of the concurrent findings recorded by both the courts on facts, the interim injunction as prayed by the appellants cannot be granted for the first time in the second appeal.

6. I have perused the papers of the second appeal. Both the courts have concurrently held that the appellants were unable to prove their physical possession as per the description of property in the suit. I have perused the copies of the sale deeds relied upon by the appellants. The sale deeds provide for description of the suit plots with boundaries shown as road on three sides and survey no. 298/1-5 on one side. In view of the discrepancy in the identification of the suit plots both the courts have refused to grant relief in favour of the appellants. All the grounds raised on behalf of appellants pertain to the description of the property with reference to the factual aspects, which cannot be considered for the first time in this interim

application.

7. It is not disputed that there was never any interim protection granted in favour of the appellants.

8. Hence, at this stage, in the absence of any prima facie evidence in favour of the appellants to indicate their physical possession of the suit plots as to identify the description of the plots, interim injunction protecting possession cannot be granted. Even otherwise, the permission for non agricultural plots stands cancelled. However, the document of title in favour of the appellants is not under challenge and the issue regarding the validity of title and possession is to be decided in these second appeals. Hence, if any third party rights are created, the same would cause prejudice to the appellants' rights and would lead to multiplicity of proceedings. Hence, during the pendency of the appeals, the parties shall not create any third party rights in respect of the suit property.

9. Interim Applications are disposed of in the above terms.

(GAURI GODSE, J.)