

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.7125 OF 2009 IN
SECOND APPEAL NO.689 OF 2009

Shrikant s/o Ravikant Patki
and ors.

..Applicants

Versus

Hanumant s/o Vishvambharrao
Deshpande (died) through L.Rs.
Santosh s/o Hanumantrao Deshpande
and ors.

..Respondents

Mr P.V.Mandlik, Senior Counsel i/b Mr Amol S.Gandhi, Advocate for
applicants
Mr Rajendra Deshmukh, Advocate for respondents 1, 2 and 5

CORAM : N.W. SAMBRE, J.

DATE : 16th January 2015

PER COURT :

1. This is an application moved by the applicants for stay.
2. The bone of contentions is in regard to two disputed properties. The property at Parbhani is in possession of present appellant, whereas the property at Ambejogai is in possession of respondents. It was claim in the proceedings that there is a gift deed which was executed by plaintiff No.2 along with his mother Annapurnabai in favour of plaintiff No.1 at Exh.66 and sale deed at Exh.88 executed by plaintiff No.2 in favour of present appellant – original defendant no.1.

3. In view of above, Mr Mandlik, learned senior Counsel submits that as the gift deed is accepted and sale deed was discarded, this Court framed issue having regard to the status of Malhari and according to him, since the second appeal is pending final hearing, the execution proceedings need to be stayed.

4. Per contra, learned Counsel for respondents submits that the plaintiff No.1 is maternal uncle of plaintiff no.2 and out of love and affection, both plaintiff no.2 – Malhari and his mother Annapurnabai have executed the gift deed at Exh.66 in his favour. He further submits that he is in possession of the property at Ambejogai by virtue of gift deed Exh.66, however, the property in possession of present appellant by virtue of sale deed Exh.88 needs to be in possession of the present respondents. According to him, provisions of the Hindu Inheritance (Removal of Disabilities) Act, 1928 Section 2 and the provisions of the Hindu Succession Act are required to be interpreted to the benefit of the present respondents. He claims that Malhari, in view of the said provisions was in law not entitled to transfer the property in question.

5. Be that as it may. As the second appeal is already admitted, it will be appropriate and in the interest of justice to stay the execution proceedings to the extent of possession claimed by the present respondents as regards property at Parbhani.

6. Having regard to the legal points raised, the hearing of the appeal is expedited. Second Appeal be placed for final hearing on 26th February 2015. The interim relief to operate till then.

7. Civil Application stands disposed of in above terms.

(N.W. SAMBRE, J.)

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