

kps

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

**WRIT PETITION NO.1032 OF 2015**

Shivaji Shankar Kudale.

..Petitioner

**-Versus-**

Bhausahab Laxman Jape.

Since deceased, through L.Rs. And others.

..Respondents

.....

Mr.P.B.Shirsath, Advocate for the Petitioner.

Mr.S.G.Thombre, Advocate for the Respondent No.1.

.....

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 03<sup>rd</sup> February, 2015**

Per Court:

1           The Petitioner seeks leave to delete the Respondent Nos.2, 3 and 4 who are the Defendants in RCS No.350/2004. Leave granted. Deletion be carried out forthwith at the risk of the Petitioner.

2           RCS No.365/2004 filed by the Petitioner for perpetual injunction as regards Gat No.144 has been stayed by the impugned order dated 24.11.2014 under Section 10 of the Code of Civil Procedure.

3           The grievance of the Petitioner is that RCS No.350/2004 filed by the Respondents is for removal of encroachment and for seeking

possession as regards Gat No.144. The second suit preferred by the Petitioner is for perpetual injunction. For six years the trial in both suits proceeded with and the recording of evidence in RCS No.365/2004 has been completed. Similarly, the Plaintiff has recorded his evidence in RCS No.350/2004.

4           Mr.Thombre, learned Advocate appearing for the contesting Respondent No.1, submits that application Exhibit-99 was filed on 13.10.2010 after six years of the institution of the suit by the Respondent No.1. The said application is allowed on 24.11.2014 and RCS No.365/2004 has been stayed. He, therefore, submits that since the recording of evidence is already completed in the second suit whereas the same is on the verge of being completed in the first suit, the impugned order could be set aside.

5           In the light of the above and in view of the statement made, the impugned order is set aside. The Writ Petition is partly allowed. No order as to costs.

**(RAVINDRA V. GHUGE, J.)**