

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.5046 OF 2011 IN
FIRST APPEAL NO.2351 OF 2011**

Shri Balasaheb Sitaram Jondhale and Anr. ... Applicants
Vs.
Shri Shirish Bhaskar Sathe and Ors. ... Respondents

Mr. Rameshwar N. Gite, for the Applicants.
Mr. Milind M. Sathaye, for the Respondent Nos.1 and 2.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 11th AUGUST, 2015

PC.

. Heard the learned counsel appearing for the Applicants and the learned counsel appearing for Respondent Nos.1 and 2 who are the original Plaintiffs. Perused affidavit of the first Respondent and in particular paragraph 13 thereof. According to the case of the first and second Respondents they have deposited a sum of Rs.5,51,904/- in excess of the amount actually payable under the impugned decree. An apprehension is expressed by the said Respondents that the Applicant may create third party rights in the suit property.

2. We have perused the impugned decree. As the First Appeal has been admitted, the clause 3 of the operative part of the impugned decree will have to be stayed subject to condition of applicants

maintaining the suit property as it is. Hence, we dispose of the application by passing the following order :-

ORDER

- (i) There will be interim stay of the execution and operation of clause 3 of the operative part of the impugned decree subject to condition of the applicants not creating any third party rights and not parting with possession of the suit property in favour of any third party;
- (ii) Till the disposal of the Appeal, applicants are restrained from creating any third party interests in respect of the suit property and from parting with the possession of the suit property;
- (iii) The amount of Rs.10,59,096/- deposited by the first and second Respondents shall be invested by the Executing Court in any Nationalised Bank till the disposal of the Appeal;
- (iv) The trial Court shall permit the first and second Respondents to withdraw the balance amount of Rs.5,51,904/- out of the amount of Rs.16,11,000/- without prejudice to the rights and contentions of the parties.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)