

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPLICATION NO. 906 OF 2017**  
**IN**  
**SECOND APPEAL NO. 442 OF 2014**

Shri Mahadeo Kashinath Kole ... Applicant

**IN THE MATTER BETWEEN :**

Shri Mahadeo Kashinath Kole ... Appellant

Versus

Shri Sadashiv Kashinath Kole and Ors. ... Respondents

Mr. Tejpal Ingale for the Applicants in both CAS and Appellant.  
Mr. Dilip Bodake for Respondent Nos. 3A to 3F.

**CORAM : S.J. KATHAWALLA, J.**  
**DATED : 19TH JULY, 2017**

**P.C.:**

1. I have perused the order passed by this Court ( Coram : Ravi K. Deshpande, J.) dated 17<sup>th</sup> July, 2015 in Civil Application No. 1002 of 2014. By the said order, the learned Judge has granted prayer (a) of the Civil Application, which reads thus :

*“(a) Pending the hearing and final disposal of this Second Appeal, the execution, operation and effect of the impugned Judgement and Decree dated 16<sup>th</sup> April, 2014 passed by the learned Ad-Hoc District Judge, Sangli in Reg. Civil Appeal No. 165 of 2009 be kindly stayed.”*

2. However, by paragraphs 3 and 4 of the said order, the learned Judge has

directed as follows :

*“3. The execution of the decree for partition shall go on. However, the possession and partition shall not be disturbed. Stand over after 8 weeks.*

*4. The Civil Application is disposed off”.*

3. After expiry of eight weeks, the Respondent made an Application to the Tahsildar to handover possession of the partitioned property. The Tahsildar accordingly passed an order directing the Appellant to handover possession. However, till date the Appellant has not received possession of the partitioned property.

4. The Applicant / Appellant has therefore taken out the above Civil Application seeking reliefs against the Tahsildar as well as the Respondent inter alia on the ground that they have committed contempt of the order dated 17<sup>th</sup> July, 2015. In my view, the Respondent ought to have moved for clarification of the order dated 17<sup>th</sup> July, 2015 instead of making an Application to the Tahsildar after expiry of eight weeks seeking possession of the property which was partitioned. In fact, the Tahsildar ought to have directed the parties to get a clarification from the Court in respect of the said order dated 17<sup>th</sup> July, 2015. The Advocate for the Respondents on instructions state that the Respondents shall until the hearing and final disposal of the Second Appeal not insist for possession of the partitioned property. The statement is accepted and in view thereof no coercive action shall be taken against the Respondents and / or the Tahsildar.

5. A copy of this order shall be forthwith forwarded to the Tahsildar.
6. The above Civil Application is accordingly disposed off.

**( S.J.KATHAWALLA,J. )**