

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1184 OF 2016
IN
SECOND APPEAL NO.786 OF 2005
WITH
CIVIL APPLICATION NO.1293 OF 2005**

Smt. Rampyari Omkarnath Shukla
since deceased through her legal heirs
1. Shri Omkarnath Chandrashekhar Shukla
And Another ... Applicants

In the matter of :

Smt. Leelavati Dhaniram Agrihotri
And Another ... Appellants

Versus

Smt. Surajdevi Putilal Shukla
since deceased through her legal heirs
1a. Shri Pitula Shukla And Others ... Respondents

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Mr. Dadhichi Sharadchandra Mhaispurkar for the Applicants.
Ms. Gauri Godse for Respondents/Original Appellants.

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CORAM : S.C. GUPTE, J.

DATE : 3 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2 Civil application No.1184 of 2016 seeks permission to carry out repairs to a structure forming part of the suit property by providing flooring

and constructing side walls. The suit property consists of a farm house alongwith a cattle shed and storage shed attached. The aforesaid repairs are proposed in the cattle shed and storage shed.

2 The suit is in connection with ownership and possession of the suit property claimed by the Appellants. Both Courts below have dismissed the Appellants' suit. The second appeal is admitted on a substantial question of law. Whilst admitting the second appeal, there was a status quo order passed by this Court on 9 August 2005. The present civil application is taken out for vacating or varying that status quo order, by permitting the Applicants herein (legal heirs of original Respondent No.2) to repair the collapsed cattle shed and storage shed attached to the farm house by constructing flooring and side walls of bricks.

3 The civil application is opposed by the Respondents (original Appellants). It is submitted that the work proposed by the Applicants is of a new construction and not repairs. From the sketch of the suit property annexed to the civil application and the photographs produced by the Applicants, it appears that the suit property comprises of two rooms. There is a dispute between the parties as to who is in occupation of these two rooms. It is the Applicants' case that they were in occupation of these rooms, whereas, it is the case of the Respondents' that a third party was inducted in the rooms by the Applicants. Be that as it may, what, however, transpires is that there is a cattle shed and storage shed attached to these two rooms. These are erected on iron poles and covered by a tin sheet roof. The Applicants want to construct flooring and enclose these structures by brick walls. In the facts of the case, there cannot be any serious

objection to the proposed work, provided, firstly, that the work is duly approved by the local planning authority, in case the law so requires and secondly, that no equities are claimed by the Applicants herein for having carried out the repair work.

4 Learned Counsel for the Applicants states that since this is a farm house, no permission of local authorities is required. He, however, submits that in case any permission is required, the Applicants will obtain the same. He also submits that his clients shall not claim any equity for having carried out the repair work proposed in the civil application or create any third party right or part with the possession of the cattle shed and storage room after carrying out the proposed work. The statements are accepted. In case permission of Grampanchayat is required for the proposed work, the Respondents will be entitled to show cause why such permission should not be granted.

5 With these clarifications, the civil application is allowed in terms of prayer clause- (a).

(S.C. GUPTE, J.)