

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

**SECOND APPEAL NO. 909 OF 2016
WITH
CIVIL APPLICATION NO. 1845 OF 2016
AND
CIVIL APPLICATION NO. 1717 OF 2017**

Vijay Devappa Shetty and another ... Appellants

Versus

Devappa Shina Shetty ... Respondent

.....

Mr. Ram Singh i/b Brijesh Mishra for the Appellants.

Ms. Dutta Geetanjali Tapan for Respondent.

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CORAM : A. A. SAYED, J.

DATE : 29th NOVEMBER, 2017.

P. C. :

1. Heard learned Counsel for the parties.
2. Leave to amend and add grounds in the Appeal.
Amendment to be carried out forthwith.
3. The gift-deed dated 1st November, 2011 executed by the Respondent during the pendency of the proceedings has not been disclosed by him. The effect of the said document would have to be considered.

4. The Appeal is ***admitted*** on the following substantial questions of law:

(i) What would the effect of the gift-deed dated 1st November, 2011 executed by the Respondent during the pendency of the proceedings and which has not been disclosed by the Respondent?

(ii) Whether the Respondent ceased to be the owner of the suit premises and therefore not entitled to decree in eviction?

5. Learned Counsel for the Respondent waives service. Private paper-book to be filed on or before 5th February, 2018, failing which the Second Appeal shall be placed before the Registrar (Judicial-II), who shall pass a self operative conditional order of dismissal of the Second Appeal if the paper book is not filed within three months.

6. Considering that a short point involved in the Appeal, the hearing of the Appeal is expedited. Liberty to apply for fixing an early date of hearing after filing of the private paper-book.

7. Learned counsel for the Appellants states on instructions from the Appellant No.1 who is present in Court that the pending the hearing and final disposal of the Appeal, Appellants shall deposit a sum of Rs. 5,500/- per month or Rs.16,500/- per quarter in this Court till final disposal of this Appeal. The learned Counsel for the Appellants on instructions further states that the Appellants will also pay the maintenance charges in respect of the occupation of the suit premises as well as municipal taxes. The statements are accepted.

8. Pending hearing and final disposal of the Appeal, the execution of the impugned judgment and order shall stand stayed subject to aforesaid deposits being made regularly by the Appellants.

9. Civil Application Nos. 1845 of 2016 and 1717 of 2017 to stand disposed of.

(A. A. SAYED, J.)