

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1971 OF 2012
IN
SECOND APPEAL NO.983 OF 2012**

Rajendra M. Kale ...Applicant/Appellant
Versus
Sunil Mahadev Kale ... Respondent

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Mr. Uday Warunjikar, Advocate for the Applicant/Appellant.
Mr. S.N.Chandrachood, Advocate for the Respondent Nos.1 to 3.

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CORAM : S.C.GUPTE, J.

DATE : 10 FEBRUARY 2017

P.C. :

. Heard learned counsel for the Parties.

2 This Civil Application seeks stay of the operation, implementation and execution of the judgment and order passed by the District Court at Pune in Civil Appeal No.715 of 2010, which is the subject matter of challenge in the present Second Appeal. By the impugned judgment and order, the learned District Judge allowed the Respondent's appeal and set aside the judgment and decree passed by the Civil Judge Senior Division, Pune in Special Civil Suit No.23 of 2008 and decreed the suit filed by the Respondents herein by declaring the will dated 18.6.2002 of late Mahadev Kale set up by the Applicant/Appellant herein (Original Defendant) as null and void and permanently restraining the Appellant/Applicant from obstructing the possession of Respondent No.3 (Original Plaintiff No.3) over the part of the suit property which is in the

latter's possession. The property consists of a structure containing 5 rooms, 2 of which are said to be in possession of the Applicant/Appellant while 3 rooms including a shop are in possession of the Respondents. Of these rooms, Respondent No.3 is in possession of one shop. It is the grievance of Respondent No.3 that the access of Respondent No.3 to his shop from the back door is obstructed by the Applicant/Appellant by putting a cage there. While the Applicant/Appellant seeks stay of the entire judgment and order passed by the first Appellate Court including permanent restraint ordered against him, Respondent No.3 seeks a suitable direction to the Applicant/Appellant not to obstruct his access to his shop from the back door. While the rest of the judgment can be stayed, it is not possible to stay permanent injunction granted by the First Appellate Court in favour of Respondent No.3. The Applicant/Appellant shall remove the obstruction placed outside the back door of the shop occupied by Respondent No.3 forthwith. It is clarified that neither access of the shop occupied by Respondent No.3, i.e. through the front or the back doors can be obstructed by the Applicant/Appellant. At the same time, the Respondent cannot in any way obstruct possession of the Applicant/Appellant of his two rooms. With these clarifications, the Civil Application is disposed of.

(S.C.GUPTE, J.)