

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

**SECOND APPEAL NO.173 OF 2016
WITH
CIVIL APPLICATION NO.321 OF 2016**

Krishna Bhairu Mane @ Mang
(deceased) and Prakash Krushnaji Mane
and Ors. ... Appellants
versus
Bhiva Vithu Mang (deceased)
and Akkubai Bhiva Mane and Ors. ... Respondents

Mr. Surel Shah, for Appellants/Applicants.
Mr. S.S.Patwardhan with Mr. Bhooshan Mandlik, for Respondent Nos.1A
to 1G and 2.

CORAM: S.J. KATHAWALLA, J.

DATE: 7th JULY, 2017

P.C.:

1. This Second Appeal takes exception to the Judgment and Decree passed by the Ld. Principal District Judge, Kolhapur in Regular Civil Appeal No. 128/2009 dated 31.07.2015, whereby the said appeal filed by the Appellants has been dismissed and judgment and decree passed by the Ld. Civil Judge, Junior Division, Kagal, in RCS No. 88/2005 dated 18.04.2009 for declaration and possession has been upheld.
2. The Respondent Nos. 1 and 2 herein are the Plaintiff who had initially instituted the suit bearing RCS No. 88/2005 for declaration as owner and in respect of suit properties mentioned in the plaint. A prayer

for injunction was also made. However, later on the plaint was amended and a prayer for possession was incorporated. The suit on title was opposed by the Appellants as well as the possession of the Respondent/Plaintiff was denied.

3. The Trial Court decreed the suit and granted decree for possession. Aggrieved thereby the Appellants preferred First Appeal bearing RCA No. 128/2009. The said Appeal was heard and by the impugned Judgment and Decree the Judgment and Decree passed by the Trial Court was modified to the extent of the right of way granted to the Respondent. Hence, the present Appeal is filed.

4. The Second Appeal has been admitted on 10.04.2017 and interim relief i.e. stay to the execution of the Judgment and Decree of both the Courts below has been granted.

5. Respondent Nos. 3(i) to 3(iii) have been served. However, despite service they have remained absent.

6. All the parties except Respondent Nos. 3(i) to 3(iii) to this Second Appeal have agreed that the impugned judgment and decree passed by the Appellate Court in R.C.A. No. 128/2009 dated 31.07.2015 be set aside.

7. Accordingly the Judgment and Decree passed by the Appellate Court in RCA No. 128/2009 dated 31.07.2015 is set aside. The First

Appeal bearing RCA No. 128/2009 is restored to the file of the Ld. District Judge, Kolhapur.

8. The Ld. Appellate Court is directed to hear and dispose of the Appeal on its own merits within a period of 12 weeks from the date of this order. All contentions of the parties are kept open. Pending the Appeal the Judgment and Decree passed by the Ld. Civil Judge, Junior Division, Kagal in RCS No. 88/2005 dated 18.04.2009 stands stayed.

9. All the parties will appear before the Ld. District Judge, Kolhapur on 18th July, 2017 at 11.00 a.m. and obtain necessary directions.

10. In view of disposal of Second Appeal, Civil Application No. 321 of 2016 does not survive and is accordingly disposed off.

(S.J.KATHAWALLA, J.)