

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO.1255 OF 2015****IN****SECOND APPEAL NO.372 OF 2010**

Shri. Nana Narayan Shinde & Ors.

....Applicants

vs.

Shivaji Narayan Shinde (Deceased His Lrs.

Smt. Alka Shivaji Shinde And Ors.

...Respondents

....

Mr. Lalasaheb Bandal, i/b. B.R. Deshmukh, for the Applicants.

None for the Respondents.

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CORAM : S.C. GUPTE, J.**DATED : 20 JANUARY 2017****P.C. :**

. Heard learned Counsel for the Applicants. This application seeks recall of a dismissal order passed in the Second Appeal for non-removal of office objections. There is a delay of ten days in taking out the Civil Application. The delay is explained in the Civil Application. For the reasons stated in the Civil Application, the delay is condoned and the order of dismissal is recalled and set aside. The appeal is restored on file.

2. Since the appeal is restored on board, learned Counsel for the Applicants/Appellants submits that the interim relief, which was obtaining when the appeal was dismissed, namely, a restraint on the Respondents from creating any third party rights, should be restored. The interim relief pertained to Gat No.62 forming part of the properties,

which were sought to be partitioned in the suit. This Court had directed that the proceedings relating to partition in respect of Gat No.62 might go on as in the case of other properties but that actual physical possession of Gat No.62 should not be handed over to any of the parties. Actual physical possession accordingly has not been handed over to any of the parties of Gat No.62 as of date. The Respondents are now pressing for partition and separate possession in respect of Gat No.62. Since the appeal is now restored and the appeal concerns the divisibility of Gat No.62, the original interim order passed by this Court will have to be restored.

3. Accordingly, it is directed that though the execution proceedings in respect of partition may go on, actual possession of Gat No.62 shall not be handed over to any party until further orders that may be passed by this Court.

4. The Applicants shall file a private paper book in the appeal within a period of three weeks from today. Appeal to come up in due course.

(S.C. GUPTE, J.)