

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

**SECOND APPEAL (ST.) NO. 16077 OF 2018
WITH
CIVIL APPLICATION NO. 873 OF 2018
IN
SECOND APPEAL (ST.) NO. 16077 OF 2018**

Annubai Mahapati Gaikwad & Anr.

....Appellants

V/s.

Kishna Dadu Sapkal & Ors.

....Respondents

Mr. V.S. Talkute i/b. Mr. Nilesh M. Wable for the appellants.
None for the respondents.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 27TH NOVEMBER, 2018.**

P.C.:

. The appellants / original obstructionists have assailed the judgment dated 27/04/2018 whereby the learned District Judge-2, Islampur, Dist. Sangli has dismissed the Regular Civil Appeal No.113/2017 and thereby confirmed the order dated 29/09/2017 rejecting their application under Order 21 Rule 97, 100 and 107 of the Civil Procedure Code.

2. The appellants herein are the daughters of one Yashwant Sapkal. Krishna Sapkal/respondent no.1 had filed the Regular Civil Suit No.497/1986 against his brother Yashwant Sapkal and respondent

no.2 for possession of Gat No.295 (Old Survey No.32/4) and house property bearing Grampanchayat No.222/2 situated at Mouje Kurlap, Taluka Walwa, Dist. Sangli . The said suit was dismissed by judgment and decree dated 05/12/1996. The appeal preferred against the said judgment and decree was allowed by the First Appellate Court by judgment dated 05/09/2002 and the matter was remanded to the Trial Court for fresh hearing. Accordingly, the Trial Court heard the matter afresh and decreed the suit by judgment and decree dated 18/08/2006 and directed the said Yashwant Sapkal and his wife Kusum and other defendants in the suit to handover possession of the house property to the plaintiff-Krishna Sapkal within a period of two months from the date of the order. The defendants in the said suit challenged the said decree in Regular Civil Appeal No.68/2006. The said appeal was dismissed on 08/08/2013. The Second Appeal No.660/2013 was also dismissed by this Court by order dated 28/07/2015. The said order was not assailed and has thus attained finality.

3. The plaintiff in the suit filed the execution proceedings being Regular Darkhast No.170/2013. The appellants / obstructionists who are the daughters of Yashwant Sapkal from the first marriage filed an application on 17/08/2015 for stay of the execution proceedings. The

stay application was dismissed on 04/11/2015 and the Appeal filed against the said order was also dismissed. The Second Appeal filed against the said order was withdrawn since it was not maintainable. The appellants, thereafter, filed an application (Exhibit-93) claiming that they being the daughters of Yashwant Sapkal, have independent right, title and interest in the suit property. The appellant claim that they were not brought on record as the legal heirs of Yashwant Sapkal and since they were not the parties to the said proceedings, the decree is not binding upon them.

4. The said application was resisted by the plaintiff/decreed holder on the ground that the appellants/obstructionists have no right, title and interest in the suit property. They have further claimed that the application was filed only with an intention to prolong the execution of the decree. The learned Trial Judge conducted an inquiry and after considering the material on record, dismissed the application vide order dated 29/09/2017. The said order was challenged in Regular Civil Appeal No.113 of 2017. The learned District Judge-2, Islampur held that Yashwant Sapkal, the father of the appellants herein had already gifted the property to his wife Kusum by gift-deed dated 21/08/1986. Said Kusum was a party to the suit property. The learned

Judge has further held that since Yashwant had already executed a gift-deed in favour of his wife who is already on record, the obstructionists who are the married daughters of Yashwant were not necessary parties. The learned District Judge has further held that the appellants/obstructionists have failed to prove that they have independent right, title and interest in respect of the suit property. On the basis of the said findings, the learned District Judge dismissed the appeal.

5. Heard Mr. V.S. Talkute, learned counsel for the appellants. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

6. The appellants had not claimed any independent right, title and interest in the suit property. The records clearly indicate that the appellants are claiming right to the suit property through their father – Yashwant Sapkal. It is not in dispute that during the life time of Yashwant, he had already executed a gift-deed in favour of his wife- Kusum. Said Kusum was admittedly a party/defendant in the suit. The learned counsel for the appellants contends that Yashwant was not competent to execute any gift-deed in favour of his wife. It is to be noted that the said gift-deed was executed in the year 1986 and there

was no challenge to the said gift-deed till the year 2015. The appellants have failed to prove that they have right to the property. The findings of the Courts below are based on evidence on record. The Appeal does not raise any substantial question of law and is liable to be dismissed.

7. Hence, the Appeal is dismissed. Suffice it to say that the Trial Court shall not be influenced by the observations made in this Appeal whilst deciding the Regular Civil Suit No.497/1986.

8. Civil Application No.873 of 2018 stands disposed of in view of the dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)