

vks

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

**CIVIL APPLICATION NO.1884 OF 2017
IN
SECOND APPEAL NO.6 OF 2018**

Arjun Ganpati Pawar	...	Applicant
V/s.		
Bhimrao Dnyanu Mali (decd)		
through Smt. Vimal Bhimrao Mali	...	Respondent.

Mr. Umesh R. Mankapure, for the Applicant.
Mr. Rahul S. Kate, for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 23rd APRIL, 2018.

P.C. :

1] Heard learned counsel for the applicant and learned counsel for the respondent.

2] By this Civil Application the applicant is seeking stay to the execution of judgment and decree of possession of the suit property in a suit for injunction. The trial Court has passed decree of restoration of possession and the Appellate Court has confirmed the same.

3] Admittedly the applicant, who is the appellant is in possession of the suit property. The submission of learned counsel for

applicant is that in the plaint and also in her evidence, it is categorically stated by respondent plaintiff that it is the defendant, who is in possession of the suit property and it is her desire that she should get possession of the suit property. She has, however, not amended the plaint to include the claim for possession of the suit property.

4] Both the trial Court and the Appellate Court allowed her claim for possession, in the exercise of inherent powers of the Civil Court under Section 151 of Code of Civil Procedure, by relying upon the judgment of Andhra Pradesh High Court, in the case of *Mir Bazlay Ali -vs- Jagirdar Nirkhy Mir Mahammad Ali (decd by LR) and ors* [AIR 2006 ANDHRA PRADESH 131],

5] In view thereof, in my considered opinion as the question of law is involved as to, “Whether in a suit for injunction in the absence of any prayer made in the suit seeking possession of the suit property, the Court can pass decree of possession in it's inherent powers under Section 151 of Code of Civil Procedure”, stay is granted to the execution of the decree, till final decision of the Second Appeal.

6] Application is accordingly disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]