

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

**CIVIL APPLICATION NO. 218 OF 2017
IN
SECOND APPEAL NO. 136 OF 2013**

Mr. Dhanu @ Ghanu Dagdu Darekar, since deceased
through his L.R. :

Mr. Ganpat Dhanu @ Ghanu Darekar ... Applicant.

In the matter between :

Mr. Babu Dagdu Darekar, since deceased ... Appellants.
through his L.R.s.:

1. Smt. Ambubai B. Darekar & Ors.

V/s.

Mr. Baban Dagdu Darekar & Ors. ... Respondents.

Mr. Jaydeep Deo, Advocate for the Applicant.

Ms. M. Prajapati, Advocate i/by Mr. S. V. Sadavarte, for Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : JUNE 14, 2018.

P.C. :

1 In this case, the Appeal is admitted only in respect of partition of the two lands bearing Gat No. 205 and Gat No. 635. While admitting the appeal, it is ordered by this court that during the pendency of the second appeal, the possession of Defendant No. 2 over Gat Nos. 205 and 635 shall not be disturbed.

2 The submission of the learned counsel for the Respondent/Plaintiff is that the execution of the partition decree can be proceeded with as there are other properties also involved. To this submission, the Applicant submits that since there is no stay to the partition proceedings, partition may be allowed to proceed, however, possession of the partitioned portions of the lands may not be handed over till the final decision of the second appeal.

3 In this civil application, the prayer is made that during the pendency of the second Appeal, Respondent be restrained by an order of injunction from creating third party interest in the two lands bearing Gat Nos.205 and 635.

4 In the affidavit -in-reply, it is stated that the Respondent /Plaintiff has no intention to do so.

5 In view thereof, it is ordered that the Appellant shall not create third party interest or part with possession of Gat Nos. 205 and 635 in respect of which the Appeal is admitted.

6 As regards the other prayer, that the Respondent/Plaintiff may be directed to deposit sums towards 2/3 share of the Appellant in the court, this prayer would be considered, only after the shares are demarcated. Liberty to apply is given accordingly.

7 The Civil Application is disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]