

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

SECOND APPEAL NO.622 OF 2018

WITH

CIVIL APPLICATION NO.1437 OF 2018

Radhabai Gopal Jadhav (deceased) through	]	
legal heir;	]	
1A. Ramakant Gopal Jadhav	]	Appellant
Vs.		
Vasanti @ Sharda Ganesh Vadake and another.	]	Respondents
.....		
Mr. S.R. Ganbavale, for Appellant.		

.....
CORAM : R.G. KETKAR, J.

DATE : 30TH OCTOBER, 2018.

P.C.

Heard Mr. Ganbavale, learned Counsel for the appellant.

2. This second appeal challenges;
 - [1] the judgment and decree dated 27th August, 2008 passed by the learned Civil Judge, Junior Division, Khed in Regular Civil Suit No.73 of 2004;
 - [2] the judgment and decree dated 2nd April, 2018 passed by the learned District Judge-2, Khed in Regular Civil Appeal No.43 of 2008.

3. By these orders the Courts below decreed the suit instituted by the respondents and directed the appellant/defendant No.2 to hand over vacant and peaceful possession of the suit premises. Mr. Ganbavale submitted that after decision of the appeal dated 2nd April, 2018, the appellant came to know that the respondent/decreed holder has transferred the property in favour of Mr. Sunil Dattatraya Kavle by document dated 9th June, 2018. He relied on Order-XXI, Rule-16

of the Code of Civil Procedure, 1908 (for short 'C.P.C') to contend that where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the applications were made by such decree-holder. He submitted that first proviso lays down that where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution. He submitted that transferee Sunil Datray Kavle has filed execution without complying 1st proviso of Order-XXI, Rule-16 of the C.P.C. He submitted that as this development took place after decision of the appeal on 2nd April, 2018, he seeks permission to withdraw the appeal with liberty to raise objection before Executing Court under Order-XXI, Rule-16. He submits that to enable the appellant to raise this objection, warrant of possession may be stayed for a period of 4 weeks from today.

4. In view thereof, on the motion made by Mr. Ganbavale, appeal is allowed to be withdrawn with liberty as prayed for and as such is disposed of. Grant of liberty shall not be construed as an expression of merits on either way. The warrant of possession shall not be executed for a period of 4 weeks from today. During this period, the appellant shall raise objections before the Executing Court and shall also obtain appropriate interim orders. All contentions of the parties in that regard are expressly kept open.

5. In view of disposal of main appeal, Civil Application No.1437 of 2018 does not survive and as such is disposed of.

6. All the parties including the Executing Court to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]