

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 14871 of 2017
(In Second Appeal No. 0761 of 2017)

District : Dhule

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| 1. Bandu Shivala Gangurde. | |
| 2. Babulal Murlya Kokani. | .. Applicants |
| 3. Dhedu Kumar Kokani. | (Original |
| 4. Dahilya Kalu Kokani. | defendants) |

versus

- | | |
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| 1. Smt. Hirabai Babulal Bagul
(Kokani). | |
| 2. Lalchand Bhavadu Kokani,
since deceased, through
legal heirs : | .. Respondents |
| 2-A. Smt. Chhabibai
w/o. Lalchand Bhoys. | (No.01 -
Original
plaintiff
&
No.02 -
Original
defendant
no.02) |
| 2-B. Shantaram s/o. Lalchand
Bhoys. | |
| 2-C. Sunil Lalchand Bhoys. | |

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Mr. B.R. Warma, Advocate, for the applicants.

*Mr. A.S. Abhyankar, Advocate, holding for
Mr. S.V. Natu, Advocate, for respondent
no.01 (caveator).*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26TH APRIL 2019

ORAL ORDER :

Heard both sides.

02. The second appeal is admitted by a detail order and substantial questions of law have been framed. In fact, as a corollary of the admission of the second appeal, the impugned judgment and decree deserves to be stayed. However, learned Advocate appearing for respondent no.01 - original plaintiff has strongly objected on the ground that both the Courts have held that the plaintiff possess 01 hectare 62 R land and her possessory title has been proved and, therefore, she cannot be restrained from cultivating the land.

03. It will not be out of place to mention here, that while admitting the second appeal, point has been taken regarding description of the property. If the operative part of the judgments of both the Courts is considered, which can be put to execution, there is no description of 01 hectare 62 R land from Gut no.56. As contended, some statement made in the body or reasoning part of the judgment may not come to help the plaintiff, under such circumstance.

04. Therefore, in view of the fact that the second appeal is admitted, there shall be stay in terms of prayer clauses "A" and "B" of the civil application.

05. The civil application is disposed of in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

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