

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 256 OF 2019

Gangadhar Laxmanrao Guhe
..VS..
Amol Shivpal Morwal and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.A. Dhawas, Advocate for appellant.
Shri K.B. Zinjarde, Advocate for respondents.

CORAM : ROHIT B. DEO,J.
DATED : 22nd AUGUST, 2019.

1. Heard.
2. **Admit.**
3. On the following substantial questions of law :
 - iii) Whether the judgment and decree passed by the First Appellate Court directing to restore the possession of the defendants/present respondents over the suit property is legally sustainable in the absence of any counter claim or any prayer in that regard?
 - iv) Whether the judgment and decree passed by the First Appellate Court directing to restore the possession of the defendants/present respondents over the

suit property is legally sustainable in the absence of any declaration or any challenging to the sale deed of the plaintiff/appellant?

v) Whether the judgment and decree passed by the First Appellate Court is legally sustainable in the light of the fact that the defendants/present respondents never challenged the legality or authenticity of the sale deed dtd. 28.01.2004 which is registered in favour of the present appellant?

4. Call for R & P.
5. Shri K.B. Zinjarde, waives service on behalf of the respondents.
6. List the appeal for final hearing in the first week of November, 2019.

Civil Application (CAS) No. 546/2019

1. The appeal is admitted on substantial questions of law.
2. The first appellate Court has directed delivery of possession of the suit property.
3. The trial Court had decreed the suit filed by

the present appellant for declaration and injunction.

4. The respondents-defendants did not lodge counter claim either for declaration that the sale deed on the basis of which the appellant-plaintiff claim the ownership is illegal or seeking the relief of possession.

5. However, although such counter claim was not lodged, the first appellate Court has not only allowed the appeal, the appellant-plaintiff is directed to deliver possession of the suit property to the defendants.

6. In this view of the matter, the judgment and decree dated 05.01.2019 in R.C.A. No. 71/2011 shall remain stayed till final disposal of the appeal.

JUDGE

Prity G.