

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

CIVIL APPLICATION (CAS) NO. 431/2019

IN

SECOND APPEAL (ST.) NO. 6598/2019

(Parasram S/o Tima Wanjari and others -Vs.- Janabai W/o Parasram Wanjai 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 D.S. Sawarkar, Advocate for the applicants.
Shri K.B. Zinzarde, Advocate for the non-applicants.

CORAM : ROHIT B. DEO, J.

DATED : 26-04-2019

Issue notice, returnable on 14/06/2019.

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This application is taken out for grant of stay to the effect, operation and execution of the order dated 12/03/2018 passed in Regular Civil Appeal 24/2013, by and under which decree of partition and separate possession in Regular Civil Suit 128/2009 (old R.C.S. 2/2009) is confirmed.

2. Both the Courts have concurrently held the plaintiffs to be entitled to share in the suit property.

3. It is not in dispute that the suit property is ancestral property.

4. The submission of the learned Counsel is that the illegitimate children have not been granted share. The learned Counsel states that the Hon'ble Apex Court has referred this issue to larger Bench. It is true that the Hon'ble Supreme Court has referred the issue to the larger Bench. However, the law which prevails as of now is that the illegitimate children would have share only in the self acquired property of the father and not in the ancestral property.

5. The other submission is that the purchaser is not a party to the suit. Such ground is not taken before first appellate Court.

6. No case is made out for grant of stay, particularly since the application for condoning the delay of 281 days is yet to be decided.

7. The prayer for interim stay, is, therefore, rejected.

8. It is clarified that the execution proceedings shall continue.

JUDGE