

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**919 CIVIL APPLICATION NO.6049 OF 2021
IN SA/845/2012**

MARUTI PANDURANG KORDE DIED THR LRS
REVANNATH MARUTI KORDE AND ORS
VERSUS
KERU KESU MORE AND ORS

...
Advocate for Applicants : Mr. Deshpande Ram B.
Advocate for Respondents 1 to 9 :Mr. Dhage Hemant U.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13-07-2021.

ORDER :

1. Heard learned Advocate Mr. Deshpande R. B. for applicants and learned Advocate Mr. Dhage H. U. for respondents No.1 to 9.
2. The Present application has been filed by legal representatives of respondent No.1 in the Second Appeal for injunction. It is to be noted that the second appeal is not even admitted though it is filed since 2012. The Present applicants who are legal representatives of respondent No.1 who was the original plaintiff and who had filed suit for partition and separate possession with perpetual injunction before the Civil Judge, Senior Division, Ahmednagar bearing Regular Civil Suit No.522 of 1988. The suit was decreed on 16-11-2004. It was held that the plaintiff is entitled to have half share in the suit lands, defendant No.7 was restrained from withdrawing the amount of compensation until the half share of the plaintiff is separated. Then

the copy of the decree was directed to be sent to Collector for effecting partition in accordance with Section 54 of the Code of Civil Procedure. The said Judgment and decree was challenged by original defendants No.1 to 3, 4(C) and 7 before learned Principal District Judge, Ahmednagar in Regular Civil Appeal No.142 of 2007. The said appeal came to be dismissed on 03-03-2012, thereby confirming the Judgment and decree passed by the learned Trial Judge.

3. Now though those appellants have again come before this Court in the Second Appeal, it is to be noted that the second appeal is yet to be admitted and they had not even filed a Stay application. Under such circumstances, the present applicants who are legal representatives of original plaintiff ought to have gone ahead with the execution of the decree. When the decree is in their favour, there is no question of granting any injunction. Further, when they themselves are not taking swift steps to get the decree executed, the discretion does not lie in their favour.

4. In view of above, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-