

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 CIVIL APPLICATION NO.6677 OF 2022
IN SA/96/2016

RAMCHANDRA SURYABHAN SHIRSATH
VERSUS
SURYABHAN BHAU SHIRSATH AND OTHERS

...
Advocate for Applicants : Mr. Karpe Rahul R.
Advocate for the respondents no. 1 to 4 : Mr. Sanket S. Kulkarni
h/f. Mr. S.D. Kulknari
...

CORAM : MANGESH S. PATIL, J.

DATE : 27 APRIL 2022

PC :

Heard.

2. This is an application for injunction by the respondent no. 1 complaining that in spite of admission of the second appeal, the respondents are bent upon to alter the situation at the spot by carrying out construction. Since it is a dispute regarding partition, any such construction by any of the parties would cause serious prejudice to the respondent no. 1.

3. Learned counsel Mr. Kulkarni for the appellants submits that since this is an appeal by his clients, the respondent no. 1 is not entitled to apply for injunction. He would further submit that already a similar application was moved before the executing court but it has been rejected and the order has not been challenged. It would operate as *res judicata*.

4. Having considered the rival submissions, it is a matter of record that the second appeal has been admitted by the order dated 14-02-2022. The dispute pertains to a joint family property. The issue regarding rights of the illegitimate son to have share in the ancestral property is *sub judice*. Apparently, the appellants are now trying to carry out the construction. The fact has not been controverted. It would be, therefore, in the interest of justice that the parties are directed to maintain status quo as obtaining today to continue till the final disposal of the second appeal.

5. The application that was filed by the respondent no. 1 before the executing court has been rejected by it apparently on the ground that it could not have travelled beyond the decree. In my considered view, that would not have any bearing on the present request for injunction, much less would operate as *res judicata*.

6. The application is partly allowed.

7. Neither of the parties shall alter the condition of the suit properties as is obtaining today till the decision of the second appeal.

[MANGESH S. PATIL]
JUDGE

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