

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 239 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 1732 OF 2022
IN
SECOND APPEAL NO. 239 OF 2022**

Balkrishna Sadashiv Jadhav (Deleted)

Subhash Sadashiv Jadhav

...Appellant

vs.

Vaishnav Balkrishna Jadhav and Ors.

...Respondents

Mr. Omkar Navwekar - Advocate for the Appellant

Mr. Rahul Kasbekar - Advocate for the Respondent Nos. 1 to 3.

CORAM : S. M. MODAK, J.

DATE : 19th SEPTEMBER, 2022

P. C. :-

1. Heard learned Advocate for the Appellant/Defendant No. 2 and learned Advocate for the Respondents / original plaintiffs.
2. The suit was filed by wife of the defendant no. 1 for herself and on behalf of two minor sons as guardian. Whereas Defendant no. 2 is brother of defendant no. 1. The plaintiffs have challenged the sale deed executed by the defendant no. 1 dated 15/03/2008 in favour of his brother defendant no. 2. The suit property is described by the Appellate Court in para no. 3-1a. It is house situated at Ichalkaranji, Tal. Hatkanangale, District Kolhapur.

3. The grievance of the plaintiffs is that the defendant no. 1 is addicted to liquor and by applying undue influence the defendant no. 2 got executed the sale deed from defendant no. 1.

4. The suit was contested by both the defendants. The defendant no. 1 has not given any evidence. The plaintiffs have pleaded that the suit property was purchased by the defendants from the income of joint business of stow repairing. Whereas defendant no. 2 has pleaded that the suit property was his self acquired property. There is also grievance raised by defendant no. 2 that the plaintiffs have forcibly entered into area admeasuring 180 sq. ft. of the suit property.

5. The suit was dismissed. However in an Appeal filed by the plaintiffs, the First Appellate Court reversed that judgment and suit was decreed. There is also counter claim filed by the defendants for taking possession from the plaintiffs. The counter claim was allowed by the trial court and in fact plaintiffs were directed to handover the possession of the middle portion to the defendant no. 2. However this part of the decree was reversed by the First Appellate Court when plaintiff suit was decreed.

6. Now the Second Appeal filed by the defendant no. 2, plaintiffs have appeared as per Caveat. There is prayer for staying execution of the Appellate Court decree. It is opposed on behalf of the plaintiffs. With the assistance of the learned Advocates, I have perused both the judgments.

7. There is a declaration granted that the impugned sale deed is *void-ab-initio*. Furthermore, defendant no. 2/present appellant is restrained from interfering with the possession of the suit property by the plaintiffs.

8. There is one more contention raised on behalf of the Respondents that when the suit was pending the defendants have obstructed them from using the toilet and if the impugned decree is stayed, there is a possibility that the Appellant may again obstruct them from using the toilet. After hearing both the learned Advocates, this Court feels that the decree so far as declaration is concerned can be certainly be stayed.

9. The Appellant is in possession part of the suit property. Plaintiffs are also in possession part of the suit property. Let there be not any direction so far as their respective possession over part of the suit property. At the same time, the Appellant needs to be directed not to create third party interest in respect of suit property or part away part of the property in their possession during the pendency of this appeal.

10. The Respondents is in possession part of the suit property. They cannot be restrained from enjoying the toilet which they are already enjoying. In view of that following Order is passed:-

ORDER

- (i) The impugned judgment so far as declaration of the sale deed is concerned is stayed during the pendency of the Second Appeal.

- (ii) The Appellant is directed not to create third party interest over the suit property and not to part away the possession of the suit property possessed by him in any manner during the pendency of the Second Appeal.
- (iii) Both the parties are directed not to obstruct or interfere in each other's possession over the part of the suit property.
- (iv) Appellant not to obstruct the Respondents from using the toilet.
- (v) Interim Application No. 1732 of 2022 is disposed of.

11. Second Appeal No. 239 of 2022 be kept for admission on 14/11/2022.

[S. M. MODAK, J.]