

Arun Mudaliyar

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

**INTERIM APPLICATION NO.17417 OF 2022
IN
SECOND APPEAL (ST) NO.25790 OF 2019**

Satish Shrirang Shinde (Before Adoption)
Satish Ramchandra Sonawane
(After Adoption) ... Applicant /Appellant
V/s.
Mangal Mahadeo Kate ... Respondent

Mr. Anant Vadgaonkar h/f. Ms. Savita Prabhune, for the Applicant
/Appellant.
Mr. Rupesh A. Zade, for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 05th SEPTEMBER 2022.

P.C:-

Interim Application No.17417 of 2022

1. Today the officers of the executing Court have gone for execution to take possession of the suit premises and hence, urgent circulation is sought and the matter is kept on production board.

2. It is submitted after taking instructions that the officers are still there on the site and yet they have not taken possession. There is a delay of two days in preferring an appeal. It is opposed on behalf of Respondent. They have appeared in person. Notice issued by this Court on 22nd July 2022. For the reasons stated in the application, the delay is condoned. Application is disposed of.

Second Appeal (ST) No.25790 of 2019 and Interim Application
No.533 of 2019

3. The Trial Court has decreed the suit for possession and present Appellant was directed to hand over possession. The first Appellate Court has confirmed that finding. The suit was filed on the premise that defendant is in peaceful possession of the suit property since March 2014. Whereas, defendant has pleaded that it is a joint family property consisting of him and his mother. The plaintiff claimed to be the purchaser of the suit property from the mother of the defendant. The defendant has claimed to be the adopted son of the mother /vendor of the plaintiffs. Both the Courts below have negated theory of adoption.

My attention is invited to the contents of para no.6 onwards on the point of the theory of adoption. The grievance is that the additional evidence sought to be produced by the Appellant was rejected without giving an opportunity to the Appellant to prove them.

4. Learned Advocate for the Respondent seeks time to address the Court on the point of maintainability of the appeal in view of concurrent finding. Considering the above situation and urgency, this Court feels that the action of taking possession to be stayed till next date. Hence, direction of taking possession is stayed till next date subject to Appellant furnishing an undertaking that he will not create third party interest and he will not part away with the possession of the premises. This undertaking be given within two weeks. Matter be kept on 19th September 2022.

5. Both the sides are directed to inform the officers who had gone to the site for execution through their respective parties about passing of this order. Matter be kept on 19th September 2022.

(S. M. MODAK, J.)