

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.12470 OF 2021
IN SA/571/2021 WITH SA/571/2021

DHONDBARAO JAYRAM NAVALE
VERSUS
NIVRATTI JAYRAM NAVALE AND OTHERS

Advocate for Applicant : Mr. S.V. Suryawanshi
Advocate for Respondent Nos. 1 to 3 : Mr. D.P. Munde

CORAM : R.M. JOSHI, J.
DATE : 13th April, 2023

PER COURT :

1. Learned counsel for the respondents seek filing of reply.
2. Reply is taken on record. Copy is made over to the appellant.
3. This application is filed by the appellant / original plaintiff seeking injunction against respondent no. 4 from creating third party interest in the suit property bearing Gat No. 245 admeasuring 2 H and 77 R land situated at Kundkar Pimpri, Taluka Aundha Nagnath, District Hingoli.
4. It is the contention of the appellant that in suit bearing no. RCS No. 179 of 2012, partition, declaration and separate possession of the suit land was sought. It is alleged that the sale deeds dated

17.02.2005 and 30.11.2005 executed in favour of respondent no. 4 are void and illegal and not binding on his share.

5. Learned Trial Court had decreed the suit and the first appellate Court reversed the said findings. It is stated that this Court has already framed substantial question of law and Second Appeal is admitted. It is the contention that though father of the plaintiff died in the year 1990, sale deeds are purported to have been executed by him.

6. Learned counsel for the respondent no. 4 opposes the said contention by stated that the factum of death of the father of plaintiff on 05.12.1990 is not established as the same could not have done on the basis of the certificate issued by the Gram Sewak after seven years. He also states that plaintiff that has not taken exception to the mutation entries taken in the name of respondent no. 4 on the basis of the said sale deed in the year 2005 and after seven years, thereof, the suit has been filed.

7. There is no dispute about the facts that the property Gat No. 245 is subject matter of the suit. In the present appeal, this Court has already found that substantial question of law is involved in the Second Appeal. It is necessary for that the suit land should be preserved till the decision of the appeal.

8. In these circumstances, application deserves to be allowed in terms of prayer clause 'C'. Hence, application stands disposed of in above terms.

9. There are two contradictory judgments. In case, the prayer clause 'B' is allowed, then there is judgment of the Trial Court which would hold the field.

10. Learned counsel for the appellants / plaintiffs states that he will not file any execution proceedings on the basis of said judgment.

11. If the plaintiff is not interested in filing execution proceeding, no purpose would be served by staying the judgment of the first appellate Court.

12. In the result, application stands allowed in terms of prayer clause 'C' only.

[R.M. JOSHI, J.]