

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6614 OF 2022
IN SECOND APPEAL NO. 206 OF 2016
WITH SECOND APPEAL NO. 206 OF 2016

Yamunabai Baburao Rautrao and Anr. ... Applicants

Versus

Shesharao Baburao Rautrao and Ors. ... Respondents

...
Mr. H.P. Jadhav – Advocate for Applicants
Mr. S.V. Warad – Advocate for Respondents
....

CORAM : GAURI GODSE, J.

DATE : 4th January, 2023

PER COURT :

1. This Civil Application is filed by the original plaintiffs praying for vacating *interim* order of stay granted by order dated 31st July, 2018 passed in Civil Application No. 2938 of 2016. Second Appeal No. 206 of 2016 arises out of partition decree. Second Appeal is admitted on 31st January, 2017 and by way of *interim* relief the execution and operation of the impugned judgment and decree is stayed.
2. Considering the nature of the decree actual division of the suit property is done in final decree proceedings, which is a lengthy

procedure. Thus, it is in the interest of justice that the final decree proceedings should continue. However, implementation of final decree and handing over of physical possession will remain stayed.

3. Since the Second Appeal is admitted, prayer for vacating interim relief cannot be granted, as the same will render the Second Appeal infructuous. However, the order of stay can be restricted to execution and implementation of final decree and actual handing over of physical possession of the suit property.
4. In such circumstances order dated 31st January, 2018 passed in Civil Application No. 2938 of 2016 thereby granting *interim* relief in terms of prayer clause 'b' will be restricted only to the extent of stay to execution and implementation of final decree by metes and bounds and actual handing over of the physical possession of the suit property. The proceedings with respect to division of the suit property in final decree proceedings shall continue.
5. In the Civil Application prayer is also made for fixing an early date of hearing, on the ground that the applicant no.1 i.e. respondent no.1 in second appeal is 80 years old. Hence, office

is directed to add the Second Appeal to final hearing board in the senior citizen category.

6. The Civil Application is disposed of, in above terms.

[GAURI GODSE]
JUDGE