

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4489 OF 2004
IN
SECOND APPEAL NO. 1477 OF 2004

Shakuntalabai Keval Mehar Mali	... Applicant
<i>Versus</i>	
Maruti Mahada Mehar Mali	
Since died, through LRs	... Respondents

...
Mr. Santosh S. Jadhavar – Advocate for applicant
Mr. Anant R. Devakate – Advocate for R/1 a

....

CORAM : GAURI GODSE, J.
DATE : 14th FEBRUARY, 2023

PER COURT :

1. This civil application is filed seeking stay of the execution and operation of the impugned judgment and decree. The judgment and decree impugned in the second appeal is for partition and separate possession. Second Appeal is admitted on 03rd January, 2023.
2. By order dated 09th December, 2004, there was an ad interim stay granted in terms of prayer clause 'B'. There is an affidavit-in-reply filed by respondent/original plaintiff to oppose

continuation of the order of stay. Second appeal is already admitted. If during the pendency of the appeal the actual handing over of physical possession is not stayed, the same will cause prejudice to the applicants. Hence, it is necessary to grant interim relief during the pendency of the second appeal. Since the decree impugned in the second appeal is for partition and separate possession, the final decree proceedings shall continue during the pendency of the second appeal, however, by way of interim relief, there will be stay to the actual handing over of physical possession of the suit property.

3. Since it is pointed out that there is already third party interest created by respondent, to avoid any multiplicity of proceedings, it is necessary to protect the status of the title of the suit property. Hence, both the parties will not create third party interest in respect of the suit property during the pendency of the second appeal.
4. Civil Application is disposed off in above terms.

[GAURI GODSE]
JUDGE