

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 162 OF 2022
WITH
CIVIL APPLICATION NO. 4335 OF 2022
IN
SECOND APPEAL NO. 162 OF 2022

Venkat Daulatrao Biradar and Ors.	... Appellants
<i>Versus</i>	
Sushilabai Ramrao Shinde	... Respondents

...
Mr. R.S. Shinde – Advocate for Appellants
Mr. D.S. Kudle – Advocate for sole Respondent
....

CORAM : GAURI GODSE, J.
DATE : 1st February, 2023

PER COURT :

1. Heard.
2. The Second appeal is admitted on the following substantial questions of law :
 - a. Whether the suit filed for declaration on title was within a period of limitation as per provisions of Article 65 of the Limitation Act ?
 - b. Whether the findings recorded by both the courts on the point of limitation can be sustained in view of the

pleadings of the plaintiff on the point of cause of action as well as limitation ?

3. Mr. D.S. Kudle – learned counsel appearing for sole respondent waives service.
4. Call for record and proceedings.
5. Printing is dispensed with.
6. The appellants to file private paper book containing judgments of both the courts, first appeal memo, pleadings, notes of evidence and exhibited documents, within a period of one year from today.

CIVIL APPLICATION NO. 4335 OF 2022

7. This Civil Application is filed for stay to the execution and operation to the impugned decree for possession. On 6th January, 2022, the learned Ad-hoc District Judge-1, Udgir, dismissed the Regular Civil Appeal No.59 of 2017. Thus, the judgment and decree dated 11th July, 2017 passed by the learned Civil Judge Junior Division, Deoni in Regular Civil Suit No.8 of 2010 stood confirmed. On 4th May, 2022 this court granted an order of stay

to the execution and operation of the impugned decree till next date. In order dated 4th May, 2022 it is recorded that, there was order of status-quo during the pendency of the appeal before the District Court. However, after dismissal of the appeal by the District Court execution has proceeded. Affidavit-in-reply is filed on behalf of respondent-plaintiff thereby stating that, the decree is already executed on 29th April, 2022. Thus, the record shows that before order of stay was granted by this court, decree is already executed. Hence, there is no question granting any stay to the execution of the impugned judgment and decree.

8. It will be open to the appellants to take steps to file appropriate application. The Civil Application is disposed of.

[GAURI GODSE]
JUDGE