

SPChauhan

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

SECOND APPEAL NO. 645 OF 2022
WITH
CIVIL APPLICATION NO. 13408 OF 2022

Sheshrao Khanderao Ghumare Died
LRs Kumar Sheshrao Ghumare and another ... Appellants
Versus
Mangal Bhimrao Shinde and another ... Respondents

....
Mr. R.P. Karhadkar – Advocate for Appellants
Mr. R.P. Dhase – Advocate for Respondent No. 1

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CORAM : GAURI GODSE, J.
DATE : 30th January, 2023

PER COURT :

Order passed in Second Appeal No. 645 of 2022

1. Heard.
2. Second Appeal is admitted on the following substantial questions of law :
 - (i) Whether both the courts were right in granting a decree for declaration with respect to the sale deed dated 29th April, 1998, in absence of any specific prayer made by the plaintiff ?
 - (ii) Whether the declaration with respect to the sale deed dated 29th April, 1998, can be said to be within limitation ?
3. Learned counsel appearing on behalf of respondent no. 1 waives service.

4. In addition to court notice, the appellants shall serve respondent no. 2 by private service and file service affidavit.
5. Call for record and proceedings.
6. Printing is dispensed with.
7. 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 six months from today.
8. Humdast is granted for service as well as record and proceedings.

Order passed in Civil Application No. 13408 of 2022

1. This Civil Application is for stay to the execution and operation of the impugned decree in the Second Appeal.
2. By the decree impugned in the Second Appeal the suit filed by the respondent no. 1 is decreed and the sale deed dated 29th April, 1998, is declared to be null and void and the respondent no. 1 is declared as owner and possessor of the suit land. By the impugned decree, the present appellants are restrained from obstructing or interfering with the possession of the respondent no. 1 on the suit land.
3. This decree passed by the trial Court is confirmed by the first appellate court. During the pendency of the First Appeal this decree was in force and there was never any stay granted to the said

decree.

4. The respondent no. 1 has filed an affidavit-in-reply to the application, thereby, stating that the respondent no. 1 is in possession of the suit land. Though, the Second Appeal is admitted on the question of law there is a finding of fact recorded by both the courts that respondent no. 1 is found in the possession of the suit property.

5. Hence, at this stage there cannot be any stay to the execution and operation of decree of declaration as well as injunction passed in favour of the respondent no. 1.

6. However, considering the nature of dispute and to avoid any multiplicity of proceeding respondent no. 1 will not create any third party interest in the suit property during the pendency of the Second Appeal.

7. Civil Application is disposed of in above terms.

[GAURI GODSE]
JUDGE