

SGA

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

**SECOND APPEAL NO.607 OF 2021
WITH
CIVIL APPLICATION NO. 15141 OF 2019
IN
SECOND APPEAL NO. 607 OF 2021**

Icharam Devram Nemade

... Appellant

Versus

Chandrakant Dongar Bhangale
and another

... Respondents

Mr. B.R. Kedar - Advocate for appellant

Mr. C.P. Patil – Advocate for respondent nos.1 and 2.

....
CORAM : GAURI GODSE, J.

DATE : 9th February, 2023

PER COURT :

Second Appeal No.607 of 2021:

1. Heard. Second Appeal is admitted on the following substantial questions of law :

- (i) Whether the decree for specific performance could have been granted, in absence of there being a specific issue framed with respect to the status of the suit property in view of the pleadings of the appellant that the suit property was an ancestral joint family property ?

(ii) Whether the issue with respect to agreement for sale being binding only to the share of the appellant was required to be framed and decided before passing the decree for specific performance ?

2. Mr.C.P. Patil, learned counsel appearing on behalf of respondent nos.1 and 2 waive service.
3. Call for record and proceedings.
4. Printing is dispensed with.
5. The appellant 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.15141 of 2019 :

6. This application is for stay to the execution and operation of the impugned judgment and decree for specific performance.
7. Since the second appeal is admitted, it is necessary to pass the interim orders in the application.
8. There is concurrent findings recorded with respect to valid execution of the suit agreement as well as payment of Rs.2,00,000/- to the appellant. Hence, it is necessary to pass conditions for grant of stay. There will be interim stay in terms of prayer clause “B” subject to the appellant depositing in this Court an amount of Rs.2,00,000/- within a period of eight weeks from today and subject to condition that the appellant will not create any third party interest in the suit property

and will not part with the suit property. The amount which will be deposited be invested in the fixed deposit. The prayer clause “B” reads thus :

“B. The impugned judgment and decree passed by the Ld. CJSD, Bhusawal in Spl.C.S. No. 50/2014, dated 06.07.2015 and confirmed by the Adhoc D.J.-I, Bhusawal in R.C.A. No.60/2015 dated 20.02.2019 and the further proceeding in Special Darkhast No. 5/2015 pending on the file of Ld. Joint C.J.S.D. Bhusawal, may kindly be stayed till pending hearing and final disposal of the Second Appeal.”

9. In the event, the amount is not deposited, the civil application will be dismissed without further reference to the Court.

10. The civil application is disposed of in above terms.

[GAURI GODSE]
JUDGE