



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

**CIVIL APPLICATION NO.294 OF 2024 IN
SECOND APPEAL NO. 248 OF 2022**

Vishwanath s/o Manikrao Kawade

Applicant

Versus

Vitthal s/o Manohar Kawade
(deceased) & others

Respondents No.2 to 7, who
are L.Rs, are already on record

Respondents

Mr. Nikhil S. Tekale, advocate for the Applicant

Mr. Ramraje S. Deshmukh, advocate for Respondents No.2 to
9.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 05th March, 2024

ORDER :

1 The applicant, who is the original appellant in this
Second Appeal, has filed this application for restraining the
respondents from interfering in his peaceful possession over
the suit property namely, lands Survey No. 588/407/B (New
No. 393/B) and Survey No, 588/407/C (New No. 393/C),
totally admeasuring 85 gunthas, situated at Ieet, Tq. Bhoom,
District Osmanabad and also for staying the effect of

Mutation Entry Nos. 6740 and 6741 in respect of the suit property.

2 According to the applicant-appellant, this Court, while admitting the appeal, has already framed substantial questions of law wherein it was mentioned that how the suit of the appellant got dismissed despite there being registered Sale Deed dated 07.06.2005, at Exhibit-65 in the suit, in his favour, which remained unchallenged.

3 The learned Counsel for the applicant-appellant also pointed out that earlier application for seeking interim relief was withdrawn by the applicant-appellant with liberty to take out appropriate application, if occasion arises. Thus, according to him, present application is filed.

4 On the contrary, Respondents No.2 to 9 strongly resisted the application by filing affidavit-in-reply, contending that both the Courts below have dismissed the suit and appeal of the present applicant-appellant and it was specifically observed that the appellant-plaintiff could not

establish his possession over the suit property. Moreover, the Sale Deed Exhibit-65 also did not indicate boundaries of suit property. The learned Counsel for Respondents No.2 to 9 pointed out that the dispute in respect of Mutation Entry Nos. 6740 and 6741 is already settled by the revenue officers and the 7/12 extracts of the suit properties are also reflecting name of Respondent No.9.

5 Heard rival submissions and also perused the documents on record.

6 Though the Second Appeal is admitted on the basis of the Sale Deed of the suit property in favour of the applicant-appellant, but both the Courts below have refused to hold that the applicant-plaintiff has established possession over the suit property. Moreover, boundaries of the suit property are also not mentioned in the Sale Deed at Exhibit-65. Further, name of Respondent No.9 is already entered into records of rights of the suit property under the order of concerned Sub Divisional Officer.

7 In view of the same, there is no *prima facie* case in favour of the applicant-plaintiff to grant relief of injunction, as prayed in this application.

8 Accordingly, Civil Application stands rejected.

(SANDIPKUMAR C. MORE)
JUDGE

adb