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

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 128 OF 2022  
WITH  
INTERIM APPLICATION NO. 862 OF 2022  
IN  
SECOND APPEAL NO. 128 OF 2022**

Dattatray Balasaheb Shingana

.....Appellant

Vs.

Babasaheb Jainuddin Khatib and Ors

.....Respondents

Mr. J. A. Udaipuri, Ms. S. J. Udaipuri i/b M/s. Udaipuri and Co. for the appellant

Mr. Ajay Laxman Bhise a/w Mr. Tejas Vijaykumar Dhotre for respondent nos. 1 to 9

**CORAM : GAURI GODSE, J.**

**DATE : 26<sup>th</sup> AUGUST 2024**

**ORDER:**

1. Heard learned counsel for the parties. The second appeal is admitted on the following substantial questions of law:

- (i) Whether in the absence of any specific declaration that the suit property exclusively belonged to the plaintiffs in view of the redemption document dated 20<sup>th</sup>

June 1989 (Exhibit 31), the plaintiffs would be entitled to seek possession from defendant no. 1?

(ii) Whether defendant no. 2 being heir and legal representative of Khadir i.e. original holder of the suit property, he would be entitled to execute the lease document in favour of defendant no. 1?

(iii) Whether the lease document executed by defendant no. 2 in favour of defendant no. 1 would be binding upon the plaintiffs in view of Section 44 of The Transfer of Property Act, 1882?

(iv) In the absence of any specific declaration of exclusive ownership of the plaintiffs, whether a decree for possession can be passed against defendant no. 1 without cancellation of lease document executed by defendant no. 2 in favour of defendant no. 1?

2. Mr. Ajay Bhise waives service for respondent nos. 1 to 9?

3. In addition to Court notice, learned advocate for the appellant to serve the respondent no. 10 by private notice and file affidavit of

service.

4. Call for record and proceedings. Printing is dispensed with.
5. Learned advocate for the appellant to file private paper-book within a period of one year.

**INTERIM APPLICATION NO. 862 OF 2022:**

6. Learned counsel for the applicant seeks leave to amend the prayers to delete prayer clause (a) and add prayer clause seeking stay to the execution of the impugned Judgment and Decree.
7. Leave granted. Amendment to be carried out forthwith.
8. Since the appeal is challenging the Judgment and Decree for possession passed in favour of respondent nos. 1 to 9, respondent no. 10 would not be required to be heard so far as the application is concerned. Respondent nos. 1 to 9 are represented.
9. Second appeal is already admitted on the question of law as framed in the order admitting the second appeal.
10. The applicant is in possession pursuant to a registered lease document executed in his favour. Hence, the impugned decree for

possession is required to be stayed. However, the applicant shall not create any third party interest or part with possession of the suit property. Hence, during the pendency of the second appeal, execution and operation of the impugned Judgment and Decree shall remain stayed.

11. During the pendency of the second appeal, the applicant shall not create any third party interest or part with possession of the suit property.

12. Application is disposed of in above terms.

**[GAURI GODSE, J.]**