

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 807 OF 2022
WITH
INTERIM APPLICATION NO. 15151 OF 2023
WITH
INTERIM APPLICATION NO. 20621 OF 2022
WITH
INTERIM APPLICATION NO. 10197 OF 2024
IN
SECOND APPEAL NO. 807 OF 2022**

Vishwanath Krushnaji Malavade and anr. ...Appellants/Applicants
vs.

Vijay Anand Malavade and anr. ...Respondents

Mr. Shreepad Murthy i/b Abhishek Patil for the Appellants.

Mr. Sanjiv Sawant a/w Abhishek Matkar for Respondents.

CORAM : GAURI GODSE, J.

DATED : 8th JULY 2024

ORDER:

SECOND APPEAL NO. 807 OF 2022:

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

(i) Whether the suit for possession could have been decreed in the absence of the document of sale deed in their favour produced

on record?

(ii) Whether the suit for possession could be decreed only based on the gift deed executed by the original owner in favour of the plaintiffs' father and in the absence of the document of title to show exclusive ownership of the plaintiffs?

(iii) Whether the claim of defendant no.1 of exclusive ownership over the constructed area, which was subject matter of Regular Civil Suit No. 39 of 2005 should have been considered by both the Courts while deciding exclusive ownership claimed by the plaintiffs over the suit property?

(iv) Whether both the Courts erred in not recording specific findings with regard to the description of the property gifted by Laxmibai in favour of Anand, specific description of the property that was mortgaged and the description of the property on which the plaintiffs claimed the exclusive ownership?

2. Mr. Sanjiv Sawant and Abhishek Matkar waive service for Respondents.

3. Call for record and proceedings.

4. Printing is dispensed with.

5. Appellants shall file private paper-book within a period of one year.

INTERIM APPLICATION NO. 20621 OF 2022:

6. This application is for stay to the execution and operation in the impugned decree.

7. Learned counsel appearing for the respondents submits that the impugned decree is also regarding payment of compensation and a separate enquiry to be conducted for mesne profits. He, therefore, submits that the impugned decree so far as that part is concerned, need not be stayed.

8. Since the second appeal is already admitted, it is necessary to stay the execution and operation of the decree for possession. However, the decree regarding payment of compensation shall be stayed subject to the appellants depositing the decretal amount. So far as the separate enquiry for mesne profits is concerned, the enquiry can proceed, however, the final decision shall be subject to outcome of the present second appeal.

9. Hence, during the pendency of the second appeal there will be interim stay to the execution and operation of the decree for possession. The stay to the execution and operation of the impugned decree for compensation shall remain stayed, subject to the appellants depositing the entire decretal amount in the trial Court within four weeks from today. The deposited amount shall be invested in a nationalized bank initially for a period of five years and

be renewed thereafter till pendency of the second appeal or any further orders passed by this Court.

10. The enquiry for mesne profits to proceed, however, the final decision not to be implemented till decision of the second appeal and the final decision on mesne profits shall be subject to final outcome of the second appeal.

11. Interim Application is disposed of in the above terms.

INTERIM APPLICATION NO. 10197 OF 2024 :

12. This application is for bringing names of heirs and legal representatives of appellant no.2.

13. The application is within time. This application is allowed in terms of prayer clause (a).

14. Amendment to be carried out in four weeks in the second appeal as well as applications for interim relief.

Digitally
signed by
MANGALTAI
JAYWANT
JADHAV
Date:
2024.07.20
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(GAURI GODSE, J.)