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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 1484 OF 2017
IN
SECOND APPEAL NO. 279 OF 2017**

Ramchandra Basappa Shete Awati
deceased through LRs

.....Applicants

Vs.

Sou. Lalita Basappa Shete/Awati
and others

.....Respondents

Ms. Anjali R. S. Baxi for the applicants

CORAM : GAURI GODSE, J.

DATE : 26th AUGUST 2024

ORDER:

1. This application is for seeking stay of the impugned decree of injunction restraining the respondents from obstructing the appellant's possession over the suit properties as described in prayer clause (b) of the application.

2. Learned counsel for the applicant submits that by an order dated 13th October 2017, this Court had directed the parties to maintain the status-quo. She submits that the said order has been extended from

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time to time. She further submits that the second appeal is admitted. She thus submits that the ad-interim protection already granted be confirmed.

3. Office remark shows that injunction has been served upon the respondents. Though served, none appears for the respondents. Second appeal arises out of concurrent decrees for partition and separate possession. A perusal of the reasons recorded by both the Courts do not indicate that the appellants are having exclusive separate possession of the suit properties. Since the impugned decree is for partition and separate possession, appellants would be entitled to stay of actual handing over of physical possession. However, further proceedings for division of the property as per Section 54 of Code of Civil Procedure, 1908 ('CPC') shall continue. Final decree proceedings for the house properties can also continue. However, there will be stay to the actual handing over of physical possession.

4. Hence, the civil application is allowed in the following terms:

(i) During pendency of the second appeal, the impugned Judgment and Decree shall remain stayed only to the extent of handing over of actual physical possession.

(ii) It is clarified that the proceedings for division of the property under Section 54 of CPC and the final decree proceedings for the house property shall continue.

5. Application is disposed of in above terms.
6. Time to file private paper-book is extended by eight weeks.

[GAURI GODSE, J.]