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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 719 OF 2023
WITH
INTERIM APPLICATION NO. 48 OF 2024
IN
SECOND APPEAL NO. 719 OF 2023**

Baldevsingh Babaji Pardeshi Deceased ... Appellants/Applicants
through Lrs

vs.

Pravinsingh Pratapsingh Gahirwal ... Respondent

Mr. Omkar Nagwekar for Appellant/Applicant.

Mr. Aditya R. Mokashi for Respondent.

CORAM : GAURI GODSE, J.

DATED : 16th OCTOBER 2024

ORDER:

1. Learned counsel for the appellants on instructions seeks leave to withdraw the second appeal with permission to vacate the suit premises within one year. He further submits that respondent nos. 2 to 4 were brought on record as heirs and legal representatives of the original defendant in the First Appeal. He further submits that respondent nos. 2 to 4 are not occupying the suit premises and they are not in contact with the appellants.

2. Learned counsel for appellants on instructions submits that the suit premises are occupied only by the appellant nos. 1.1 and 1.2. He further submits that nobody else except the appellants is in possession of the suit premises. He therefore submits that the appellants shall file undertakings in this court stating that only appellants are occupying the suit premises and they shall hand over the possession of the suit premises to respondent no.1 within one year from today. He further on instructions submits that the appellants shall not part with the possession of the suit premises and shall not create any third party interest.

3. In view of the undertakings given on behalf of the appellants, learned counsel for respondent no.1 has no objections for granting one year time. He however, submits that the impugned decree be confirmed as against respondent nos. 2 to 4. He further submits that respondent no.1 be granted liberty to execute the impugned decree against respondent nos. 2 to 4 if any occasion so arises.

4. In view of the aforesaid, the second appeal is disposed of by passing following order:

I) The appellants are granted one year time from today to vacate the suit premises subject to they file an undertaking in this court stating that only the appellants are occupying the

suit premises and except the appellants nobody else is occupying the suit premises. The undertaking shall further state that appellants shall not create any third party interest or part with the possession in favour of any third party.

II) The undertaking shall state that the appellants shall hand over possession on or before 16th October 2025 to respondent no.1.

III) The aforesaid undertakings to be filed within one week from today with an advance copy to the learned advocate appearing for respondent no.1.

IV) The impugned decree stands confirmed as against respondent nos. 2 to 4.

V) Respondent no.1 is at liberty to make an application before the Executing Court for deferring the execution proceedings to a suitable date after a period of one year.

VI) Respondent no.1 shall be at liberty to execute the impugned decree against respondent nos. 2 to 4 or the appellants if undertakings given by the appellants are not complied with.

VII) Learned advocate for the appellants is permitted to file

affidavit-cum-undertaking in physical form in the registry within one week from today.

6. The appellants are therefore granted leave to withdraw the second appeal on the aforesaid terms.

5. Second appeal is disposed of as withdrawn on the aforesaid terms. The pending application is disposed of as infructuous.

(GAURI GODSE, J.)