



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 SECOND APPEAL NO. 949 OF 2018

Kalyanrao Abarao @ Ambadasrao Nakhate
Versus
Munjaji Abarao @ Ambadasrao Nakhate And Others

...
Mr. Arvind Deshmukh h/f Mr. S. S. Choudhary, Advocate for Appellant
Mr. P. D. Digraskar and Mr. M. C. Ghode, Advocates for R| 1 to R| 4
...

WITH
SECOND APPEAL NO. 948 OF 2018
WITH
CIVIL APPLICATION NO. 15137 OF 2018 IN SA/949/2018
WITH
CIVIL APPLICATION NO. 15136 OF 2018 IN SA/948/2018
...

CORUM : ROHIT W. JOSHI, J.
DATE : 1st APRIL, 2025

ORDER :

1. Admit on the following substantial question of law:

“Whether the learned First Appellate Court was right in discarding the will executed by the deceased father Abarao, in favour of defendant No. 1, only on the ground that other legal heirs and particularly the daughter were excluded from the will?”

Civil Application No. 15136 of 2018 :

- . In view of the admission of the Second Appeal execution of the impugned decree is stayed till final disposal of the appeal.

Second Appeal No. 949 of 2018 :

1. Admit on the following substantial questions of law:

“(A) Having held that the plaintiff was in exclusive possession of the suit property, whether the learned First Appellate Court was justified in dismissing the suit for perpetual injunction on the ground that the plaintiff had failed to prove threat to his possession ?

*(B) Are the findings recorded by the learned First Appellate Court on the aspect of threat of dispossession sustainable in light of law laid down by the Hon’ble Supreme Court in the matter of **Santosh Hazari Vs. Purushottam Tiwai (Dead) by L.Rs.** ¹, inasmuch as the same were arrived at without considering the findings recorded by the learned Trial Court ?”*

Civil Application no. 15137 of 2018 :

1. In view of admission of the Second Appeal and also in view of findings by both the learned Courts that the appellant is in exclusive possession of the suit property, till the final disposal of the appeal respondent shall not disturb possession of the appellant over the suit property.
2. The civil application is disposed of.

**[ROHIT W. JOSHI]
JUDGE**

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