

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 38556 OF 2025
IN
SECOND APPEAL (ST) NO. 25622 OF 2025

Vishvanath Eknath Gangavane ..Applicant

Versus

Ramesh Nanasaheb Nirgude & Anr ...Respondents

Mr. Nikhilesh Pote, with Tanmay Jadhav, for the Applicant.

CORAM: N. J. JAMADAR, J.

DATE : 17th DECEMBER 2025

P.C.:

1. By this Application, the Applicant seeks stay to the execution and operation of the judgment and decree dated 10th April 2017 in Civil Appeal No. 416 of 2016 passed by the District Judge, Pune, thereby affirming the judgment and decree dated 19th August 2015 in Final Decree Application in Special Civil Suit No. 357 of 1992.

2. Mr. Nikhilesh Pote, the learned Counsel for the Applicant, would urge that by an order dated 3rd November 2025, the executing Court in Regular Darkhast No. 8 of 2016 has appointed a Court Commissioner to partition the plot and deliver 50% share therein to the Decree Holder and in case it is not possible to partition the said plot, sell the leasehold

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rights in the said plot and pay 50% of the sale proceeds to the Decree Holder. It is, therefore, necessary to stay the execution and operation of the impugned judgment and decree.

3. Apart from the question of huge delay of 2653 days in filing the Second Appeal, this Court finds that no case for grant of interim injunction is made out as, admittedly, the Applicant had not preferred any appeal against the preliminary decree passed in SCS No. 357 of 1992.

4. In view of the provisions contained in Section 97 of the Code of Civil Procedure, 1908 (“the Code”) if an Appeal is not filed against the preliminary decree and its correctness is not challenged, it becomes final and the party aggrieved thereby will not be permitted to challenge its correctness in appeal against the final decree.

5. In the impugned judgment and decree, the learned District Judge had adverted to the consequences that ensued the failure on the part of the Applicant to challenge the preliminary decree. Even otherwise, the learned District Judge found no illegality in passing the final decree based on the Court Commissioner’s Report.

6. In these circumstances, the Court is not inclined to accede to the prayer of the Applicant to grant interim stay to the execution and operation of the final decree passed in SCS No. 357 of 1992, till the determination of the Application for condonation of delay.

7. Application dismissed.

[N. J. JAMADAR, J.]