IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

919 SECOND APPEAL NO. 619 OF 2026

Shantabai Gunadharrao Kshirsagar
VERSUS
Namdeo Shenphadu Mhaske And Others
...
Ms. Zinjurdepatil Pooja Nanasaheb, Advocate for Appellant
Mr. Gaurav L. Deshpande, Advocate for Respondent No.1 (caveator)

WITH
CIVIL APPLICATION NO. 13006 OF 2026 IN SA/619/2026
....

CORAM : SANJAY A. DESHMUKH, J.
DATE : 31.10.2026

P.C. :-

SECOND APPEAL NO. 619 OF 2026

1. Heard learned Advocate for the Appellant.

2. Issue notice to the Respondents. Learned Advocate, Mr. Gaurav Deshpande, waives notice for Respondent No.1.

3. The Appeal is admitted on the following substantial questions of law:

a. Whether the learned Trial Court and the First Appellate Court erred in deciding the objection filed by the Appellant herein by framing issues/points and permitting the parties to lead evidence thereon ?

b. Whether the judgment and decree obtained by the

Respondents are vitiated by fraud practised upon the Court, as contemplated under Section 44 of the Indian Evidence Act, 1872, corresponding to Section 38 of the Bharatiya Sakshya Adhiniyam, 2023 ?

4. Call Record and Proceedings.

CIVIL APPLICATION NO. 13006 OF 2026 IN SA/619/2026

1. This is an application seeking a stay to the execution of the impugned judgment and decree.

2. Heard the learned Advocates for both sides.

3. The learned Advocate for the Applicant points out the reasons and findings of the learned Trial Court as well as the learned First Appellate Court and submits that if the impugned judgment and decree is not stayed and possession is handed over to the Respondents, the very purpose of filing the present Appeal would be frustrated. She further submits that this Court has now formulated two substantial questions of law. She, therefore, prays for grant of interim relief.

4. Learned Advocate for the Respondents submits that the application cannot be allowed, as there are concurrent findings against the applicant. He further submits that the alleged agreement

to sell is inadmissible in evidence in view of the provisions of Section 35(2) of the Stamp Act, as it is an unregistered agreement to sell. He also points out that the suit for specific performance filed by the Applicant has also been dismissed. He, therefore, prays that the application be rejected.

5. Perused the impugned judgment as well as the judgment of the learned Trial Court. Considering the fact that this Court has formulated two substantial questions of law, and that if possession is handed over to the Respondents, the very purpose of filing the present Appeal would be frustrated, this Court is of the view that it would be proper to grant a stay to the execution of the impugned judgment and decree, as prayed for. Accordingly, execution of the impugned judgment and decree is stayed in terms of prayer clauses 'B' and 'C'.

6. The application is allowed and disposed of accordingly.

[SANJAY A. DESHMUKH, J.]

HRJadhav