

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.13155 OF 2008 IN
SECOND APPEAL NO. 914 OF 2008**

Devgir s/o Narayangir, deceased through L.Rs.

Applicants

Versus

Vithalgir s/o Tukabuwa Puri & another

Respondents

Mr.Dhananjay Deshpande, advocate for the applicants.

Mr.M.P.Kale, advocate for Respondents.

CORAM: R.M.BORDE, J.

DATE : 31st July, 2009.

P.C.:

Heard Shri Dhananjay Deshpande, learned Counsel for applicants and Shri M.P.Kale, learned Counsel for Respondents.

The applicants have prayed for grant of stay of operation of decree of injunction passed by the trial Court, which has been confirmed by first appellate Court. Prayer made for the first time in the Second Appeal cannot be considered as there is concurrent finding recorded by the Courts below in respect of possession of original plaintiffs in relation to the suit property.

Learned Counsel for Respondents-original plaintiffs makes a statement that decree passed by the trial Court clamping injunction against defendants/appellants herein on 5th July 2006 was not stayed during continuance of first appeal. As such, decree of injunction passed by the trial Court is operative since 5th July, 2006.

In this view of the matter, prayer made by applicants for

grant of stay to the operation of decree of perpetual injunction cannot be considered.

It is apprehended by the applicants that taking advantage of the judgment and decree passed by the trial Court Respondents/original plaintiffs may create third party interest.

Learned Counsel for Respondents / original plaintiffs makes a statement on behalf of plaintiffs / Respondents herein that his clients will not create third party interest during continuance of this appeal.

In view of this, application stands rejected.

(R.M.BORDE)
JUDGE

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