

**Order Below Exhibit 5 in R.C.A. No.63/2017**  
**(Rajakka Gavade Vs. Shivaji Gavade)**

1. The appellants have filed this application for stay to the execution of decree passed in RCS No. 259/2007 under Order 41 Rule 5 of Code of Civil Procedure.
2. The ld. Trial court has decreed the suit filed by respondent/plaintiff for partition and separate possession and declared that plaintiff and defendant no. 2 and 3 (appellant no. 2 and 3) have 1/3 share each in the suit property.
3. According to appellants necessary parties are not included in suit. The respondent has no concern with the suit property. The ld. Trial court has wrongly observed that appellant no. 1 is not legally wedded wife of Vitthal Santu Gavade and if the decree under appeal is executed the appellant will suffer great irreparable loss.
4. The respondent has resisted the application by filling reply Exh. 17 on the ground that there is no any substantial question of law in the appeal and the appeal is preferred only with the intention to prolong the execution of decree.
5. Heard ld. Counsel for the appellant and respondent at length. The decree is for partition and separate possession of the suit property. The right to appeal is a substantial right of the appellant. The decree is executable decree therefore, if the possession as per the shares determined by ld Trial court has been handed over, it will cause prejudice to the plaintiff. Being a decree for partition and separate possession, during the pendency of appeal it is necessary to stay the actual handing over of possession of the shares as per the decree during pendency of the appeal. Considering the nature of dispute it is necessary to expedite the hearing of the appeal. Therefore, I proceed to pass the following order.

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**ORDER**

1. The application is partly allowed.
2. The actual handing over of possession of the shares as per the decree in RCS No. 259/2007 is hereby stayed till the decision of the appeal.
3. The hearing of the appeal is expedited.
4. The appellants are directed to deposit the paper book charges or to submit private paper book.
5. Cost is in cause.

ISLAMPUR.

17 January, 2018

Sd/xx

( R.B.Rote)

District Judge-2, Islampur.