

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 293 OF 2019
ALONGWITH
CIVIL APPLICATION NO. 574 OF 2019**

Jagdish Ramchandra Gaikwad ...Appellant/Applicant
vs.
Parshuram Babaji Gaikwad and Ors. ...Respondents

Mr. Samir Vaidya - Advocate for the Appellant/Applicant

CORAM : S. M. MODAK, J.

DATE : 30th AUGUST, 2022

P.C. :-

1. Not on board. Mentioned. Taken on board. Heard learned Advocate for the Appellant/Judgment Debtor/ Defendant No. 1.
2. The Second Appeal was numbered in the year 2019. The trial Court has dismissed the suit for declaration that the Defendant No. 1 is having no authority to carry out the unauthorized construction and also for handing over possession of the suit premises. Defendant No. 1 though filed written statement has not adduced any evidence. The Trial Court was pleased to dismiss the suit as the plaintiff has failed to discharge the burden.
3. When the plaintiff filed First Appeal after hearing both the sides the

suit was decreed. The present Appellant was directed to handover the possession of the suit property within one month from 04th September 2017.

4. For some reason or other, the Second Appeal was not numbered earlier but it was numbered in the year 2019.

5. Today urgent circulation is sought because executing Court on 18/08/2022 has issued a possession warrant. Its copy is placed on record. This Court on 12/02/2020 was pleased to issue notice to Respondent Nos. 2 to 7. Whereas there is appearance on behalf of Respondent No. 1. For some reason or other, the Appellant has not asked for circulation. The copy of the Order dated 05/04/2022 passed by the learned Registrar Judicial (II) is annexed to the Praecipe. Service was awaited.

6. Learned Advocate for the Appellant has attempted to ask for interim relief and he has read over the observations of the trial Court as well as the First Appellate Court.

7. Considering the fact that after the judgment of the trial Court on 04/09/2017 and considering the fact that this Appeal was not circulated earlier and considering the fact that the possession warrant is already issued on 18/08/2022, this Court is not inclined to stay the possession warrant without conditions.

8. The execution of the possession warrant if not already executed till

now be stayed till the next date only on condition that the Appellant will furnish an undertaking before the Executing Court on 02/09/2022 or on next working day if holiday is there that he will handover the possession when directed by this Court. The undertaking should also contain an averment that in respect of the suit property he will not create third party interest in any manner and part away the possession.

9. The matter be kept on 20/09/2022.

[S. M. MODAK, J.]