

Civil Appeal No. 71/2020**ORDER BELOW EXH. 9**

This is an application filed on behalf of the appellant praying to stay the further execution of the judgment and decree dated 26.08.2014 in Spl. Civil Suit No. 1882/2010.

2] The application has strongly been resisted by respondent No. 1 by filing say at Exh. 21.

3] Heard Ld. Advocate Shri. Satpute appearing for the appellant. Heard Ld. Advocate Shri. Shivale appearing for respondent No. 1. Perused the record.

4] On having heard both the sides and after having gone through the record, it appears that respondent No. 1/plaintiff had filed a Spl. Civil Suit No. 1882/2010 against the father and paternal uncle of the appellant for specific performance of the contract dated 27.01.2010 in respect of sell of agricultural land admeasuring 1H.20R in Survey No. 170. The said suit came to be decreed, but, *exparte*. The appellant preferred an application under Order IX Rule 13 of CPC to set aside the said *exparte* decree. The said application came to be rejected.

5] In the mean time, a delay occurred in preferring the present appeal to challenge the said *exparte* decree. Hence, the appellant filed a delay condonation application bearing Civil Application No. 330/2018. The same came to be allowed. Hence,

the present appeal came to be registered to challenge the *exparte* judgment and decree.

6] By the said decree, the defendants therein i.e. the father and paternal uncle of the appellant were directed to execute sale deed in respect of the suit property after receiving remaining consideration of Rs. 13,00,000/-. Accordingly, a Spl. Darkhast bearing No. 10/2015 came to be filed. A Court Commissioner came to be appointed. He executed the sale deed in respect of the suit property in favour of respondent No. 1/plaintiff. The possession warrant is yet to be executed.

7] The grounds to challenge the impugned judgment and decree are that the father of the appellant viz. Kisan had died prior to the delivery of judgment in the said suit. The suit property is yet not partitioned. The appellant had no notice of the pendency of the suit. With these and such grounds, the *exparte* decree has been assailed.

8] In the light of aforesaid objections, it appears that as per the death certificate, the father of the appellant viz. Kisan died on 21.12.2013. The impugned judgment and decree came to be delivered on 26.08.2014. Thus, the impugned judgment and decree was delivered against a dead person.

9] That apart, on perusal of the agreement for sell dated 27.01.2010, particularly Para 17 of the same, it appears that it has been specifically mentioned therein that the suit property

admeasuring 1H.20R in Survey No. 170 has been possessed by Kisan(defendant No. 1), Dattatraya (defendant No. 2) and their brother Dnyanoba, who was not party to the said agreement and suit as well. Kisan and Dattatraya had signed the agreement for themselves and on behalf of Dnyanoba. Thus, it appears that the suit property has been jointly owned by Kisan, Dattatraya and Dnyanoba who are three real brothers.

10] The said fact has been buttressed by 7/12 Extract, wherein, it has been specifically mentioned below their names that the land admeasuring 1H.80R in Survey No. 170 has been jointly owned and possessed by them. The said fact further came to be buttressed by another document namely Mutation Entry No. 1269. It has been specifically mentioned therein that after executing the sale deed by the Court Commissioner, only 86R land was left in the name of Kisan and Dattraya.

11] In all these circumstances, there appears arguable and considerable points to challenge the legality and correctness of the *exparte* decree in Spl Civil Suit No. 1882/2010. Filing of an appeal is a statutory right. In the aforesaid premises, if the possession warrant is issued and the decree is fully executed, the very purpose of filing the present appeal would be frustrated. Hence, the further execution in Spl. Darkhast No. 10/2015 needs to be stayed. Moreover, as the suit is of the year 2010, certain directions needs to be given to the parties for proceeding with the present appeal expeditiously. Hence, the order-

ORDER

- 1- The further execution in Spl. Darkhast 10/2015 is hereby stayed till the final disposal of the present appeal.
- 2- R & P of the suit bearing No. 1882/2010 be called for.
- 3- The appellant is directed to get prepared a private paper book on or before next date.
- 4- Both the parties are directed to proceed with the appeal expeditiously.

Place : Pune.
Date:-23.02.2023

(Kishor N. Shinde)
Ad-hoc District Judge-4 and
Assistant Sessions Judge, Pune.

I affirm that the contents of this PDF file are same word for word as per original.

Name of Steno	:	Sau.U. S. More, (Steno-I)
Court name	:	Shri. K. N. Shinde Ad-hoc District Judge- 4, Pune.
Order delivered on	:	23.02.2023
Order signed by PO on	:	23.02.2023
Order uploaded on	:	23.02.2023