

**IN THE COURT OF AD-HOC DISTRICT JUDGE-1,
SANGAMNER, DIST. AHMEDNAGAR.**

Regular Civil Appeal No. 20/2017

Kashinath Namdeo Bharitkar and others .. **Appellants** .

Versus

Sandeep Dattatraya Chothav and others, .. **Respondents.**

Appearance-

Mr. P. R. Malpani, the learned advocate for the appellant.

Mr. K. D. Dhumal the learned advocate for respondents.

- ORDER BELOW EXH. 7-

1. This is an appeal directed against Judgment and decree dated 31.01.2017 in Regular Civil Suit No. 567/2011, whereby , the learned Civil Judge Senior Division, Sangamner pleased to decree the suit.

2. Appellants are the original defendant Nos. 1 to 3 and respondents are original plaintiffs and defendant Nos. 4 to 7 in the above numbered suit.

3. For the sake of convenience, parties will be referred to by their respective nomenclature in the suit i. e. " plaintiffs" and " defendants ".

Brief Facts :-

4. This is an application taken out by the appellants / original defendants under Order 41 Rule 5 of the Code of Civil Procedure seeking stay to operation of impugned Judgment and decree dated 31.01.2017.

5. By way of the present application, it is contended that the learned trial Judge has wrongly appreciated vital admissions by the original plaintiffs and cadastral surveyor. The impugned decree is conditional. Therefore, this decree needs to be stayed.

6. Respondents have not filed say and chosen to rely upon oral submissions.

7. Heard the learned advocates Mr. Malpani for appellants and Mr. Waman i/b Mr. Dhumal for respondent Nos. 1 to 3.

8. The points arise for determination along with findings and reasons thereon are as under :

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether appellants have made out grounds to stay operation of the impugned decree ?	Yes.
2	What order ?	.. The application is allowed.

REASONS

9. I have considered the impugned Judgment and decree. The suit is for correction of revenue record, fixation of boundaries and possession of alleged 40 R land. The learned trial Judge having considered oral and documentary evidence on record pleased to decree the suit.

10. Mr. Malpani, the learned advocate for appellant drew my attention to the material admission by the cadastral surveyor and map prepared by him after measurement.

11. Having regard to material admissions by the cadastral surveyor, I am of the considered view that it is a fit case to stay operation of the impugned decree. The evidence on record shows that it needs re-appreciation by the appellate Court.

12. In the result, I am of the view that the impugned decree being executable in nature and it needs reconsideration , it deserves to be stayed to avoid further multiplicity and proper adjudication of the rights of the parties.

13. Mr. Waman, the learned advocate for respondents submits that in the event of granting stay, appeal may be expedited .

14. Taking into consideration that this is dispute regarding fixation of boundaries and possession of 40 R land, it would be just and proper to expedite the hearing.

15. In view of the aforesaid reasons, I pass the following order.

ORDER

- 1) The operation and execution of the impugned decree is stayed till final disposal of the appeal.
- 2) The appeal is expedited and the parties are directed to dispose off the same within one year.

Date:- 02.05.2018
Sangamner.

(H. M. Bhosale)
Ad-hoc District Judge-1,
Sangamner