

**COMMON ORDER BELOW EXH-7 AND 35 IN REGULAR CIVIL  
APPEAL NO.42/2018**

1. By way of present regular appeal under Section-96 of the Code of Civil Procedure the original defendant No.8 to 10 have taken exception to the judgment and decree dated 26.07.2018 passed by the learned Civil Judge Senior Division, Newasa in RCS No.84/2014 wherein the learned trial court has decreed the suit for partition and separate possession.

2. The learned counsel for appellants submitted the appellants have preferred above said application Exh-7 for stay to the execution of impugned decree. However, the same is pending for hearing. The respondents/ original plaintiffs are not appearing in the matter and at the same time they are pressing for execution of the preliminary decree before the learned trial court and requested for sending the same to the Collector for effecting partition by metes and bounds.

3. They further submitted that if Clause-2 and 3 of the decree would perused though the learned trial court has observed that all the three branches i.e. branch of late Ramchandra, late Laxman and late Gangaram would be entitle for 1/3<sup>rd</sup> share each. However in clause -3(c) share has given only to Subhash Laxman Adhav, Suhas Devdatta Adhav and Rajesh Devdatta Adhav. No share has allotted to Ramchandra Laxman Adhav who is falling in the branch of Laxman Adhav. Therefore, no share has allotted to original defendant No.7, 8, 9 and 10. Though there is no dispute on the aspect that they are also legitimate heirs of common ancestor Sambhaji.

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4. In such circumstances, if the partition would be effected as per impugned decree these parties would be permanently deprived from their valuable rights of share in the property. Hence, it is necessary to stay the execution, operation and implementation of impugned decree till final disposal of the appeal.

5. The learned advocate Shri.Khiladkar for respondent No.4 and 5 supported the said contention.

6. The power of attorney holder of respondent No.1 Subhash Adhav by name Lalitkumar Adhav appeared in the matter on 04.01.2023 and submitted that he wish to change his advocate and sought adjournment. Accordingly the matter kept on 06.01.2023. However, he did not remain present hence, the application heard in his absence and kept for order today as it was intimated that the proceeding before the learned trial court is also fixed today.

7. However, today also nobody appeared on his behalf in spite of repeated calls in both sessions. It appears that no say has filed to the applications Exh-7 or 35. Rather there is pursis at Exh-29 wherein it has mentioned that the respondents are ready for giving share to the legitimate heirs of the appellants in Gut No.39, 148 and 159. However, if the impugned decree would perused there is apparent error in respect of share of son of the heirs. In such situation, if the partition would effected by metes and bounds certainly it would create further complications. Hence, it is necessary to clarify the position before sending the decree for partition. Hence, without going into the further merits of the appeal it is necessary to stay the execution, operation and implementation of the impugned decree in order to avoid further complication.

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8. At the same time, it is also necessary to consider that the respondent No.1 to 3 have not submitted their say to the main application Exh-7 till today. Hence, by way of indulgence a chance is required to be given to them to agitate their point. Hence, the matter adjourned to 09.02.2023. It is also necessary to stay the execution, operation and implementation of the impugned decree at least till next date. It is made clear that the application Exh-7 and 35 would be disposed off on next date even in the event of absence of respondent No.1 to 3. Hence, I pass following order;

**ORDER**

- 1 The execution, operation and implementation of the judgment and decree dated 26.07.2018 passed by the learned Civil Judge Senior Division, Newasa in RCS No.84/2014 is hereby stayed till next date i.e. till 09.02.2023.

Date : 07.01.2023  
Place : Newasa

( V.Y.Jadhav )  
District Judge-1, Newasa  
J.O. Code-MH02455