

MHBIO1-000500-2016

ORDER BELOW EXH. 5
IN REGULAR CIVIL APPEAL NO.26 of 2016
(Shankar Wamanrao Kedar and Ors. Vs. Pushpalata)

1. By this application, the appellants have prayed for stay to the execution and operation of judgment and decree dtd. 21.01.2016 passed by C.J.J.J.D., Shirur (K) in R.C.S. No.56/2008.

2. In short, it is the contention of appellants that by taking undue advantage of the judgment and decree under appeal, the respondent is making haste to execute the decree under appeal immediately and trying to dispossess them from the suit land. Admittedly, the appellants are in possession of suit land and they reside in it since 1980. A house and cattle shed are constructed by the appellants in the suit land. If appellants are dispossessed from the suit land, then they will suffer an irreparable loss and the very purpose of filing of appeal will become infructuous. Hence, this application for stay.

3. The respondent has filed her say to the stay application at Exh.18 and resisted the application on the grounds that the appellants have filed this application only to deprive her from getting the fruits of decree. The appellants were never legal owner and possessor of suit property, therefore, question of sustenance of irreparable loss by the appellants does not arise. The respondent has lastly prayed for rejection of application.

4. Heard the Ld. counsel for both the parties.

5. The Ld. counsel for the appellants submits that admittedly, the appellants are in possession of suit property and if their possession is not protected, then they will suffer an irreparable loss. He lastly prays to allow the application. Per contra, the Ld. counsel for the respondent submits that legally the appellants are not in possession of suit property. He further submits that after selling 05 Ac. land to the respondent by the appellant, no land remains there and no case has been made out by the appellants to grant stay. He lastly prayed for rejection of application.

6. Perused the application, say of respondent and record. Judgment of lower Court shows that the defendants/present appellants are directed to deliver vacant possession of disputed land to the plaintiff/respondent within 90 days from the date of order 21.01.2016. Thus, It itself shows that that the appellants are in possession of suit land. The allegation of respondent that after selling 05 Ac. land to her by the appellants, no land remains there, will be considered at the time of decision of appeal. So also the other objections raised by the respondent will be considered and decided at the time of final decision of appeal. According to appellants, the respondent is trying to execute the decree and if decree is executed, the appeal will become infructuous. Therefore, I am of the opinion that in order to protect

possession of the appellants, it is necessary to stay the execution and operation of judgment and decree under appeal till the disposal of appeal.

ORDER

1. Execution and operation of judgment and decree dtd. 21.01.2016 passed by lower Court in R.C.S. No. 56/2008 is hereby stayed till disposal of main appeal.
2. Parties are directed to expedite the appeal.

Beed
Date 26.02.2018.

Sd/- 26.2.2018
(M.J.J. Baig)
Ad hoc District Judge -1,
Beed

ORDER

3. Execution and operation of judgment and decree dtd. 21.01.2016 passed by lower Court in R.C.S. No. 56/2008 is hereby stayed to the extent of delivery of possession till disposal of main appeal.
4. Parties are directed to expedite the appeal.