

MHBU010012312022



**R.C.A.NO.61/2022**  
Parwatabi Palwe & Ors  
Vs.  
Anusayabai Palwe

**ORDER BELOW EXHIBIT NO.5**

(Passed on this 16<sup>th</sup> day of February 2023)

1] Instant application (Exh.5) has been filed by appellants for grant of stay to the execution and operation of impugned judgment and decree passed by learned trial Court i.e. Civil Judge, Jr.Dn.Deulgaon Raja in a case RCS No.54/2008 between the parties Anusayabai Palwe Vs. Parwavatiba Kaduba Pawle, Learned trial Court has decreed the suit by declaring that plaintiff is having half share and defendants No. 1 to 8 are jointly having half share. Due to such decision, defendants are aggrieved. Therefore, impugned judgment and decree has been challenged before this Court. The learned Counsel for appellants submitted that in operative order, it has been directed that precept shall be sent to the Collector for being effecting partition and possession. Therefore, apprehension is created in the mind of the appellants that partition would be effected from the side of Revenue Officer and if such thing is happened, then entire purpose of preferring appeal would become infructuous. On the basis of these grounds, lastly it is prayed for grant of stay to the execution and operation of impugned judgment and decree till decision of appeal.

2] Learned Counsel of respondent has filed say to the stay application which is at **Exh.12** and thereby opposed stay application by contending that learned trial Court has passed correct decision. Since last

14 years, plaintiff has been deprived from enjoyment of suit property. He further submitted that execution proceeding has not been filed in the Court. Therefore, there is no question of granting stay to the impugned judgment and decree as prayed. Lastly, it is requested that stay application should be rejected.

3] I have heard both the learned Counsels of the parties. On perusal of case papers, it will find that dispute is relating to the immovable property. In appeal memo, various grounds are taken by appellant for challenging impugned judgment and decree. For being decided legality of impugned judgment, certain time period will be required. It also finds that rights and liabilities of both the parties appeared to have been involved in the present case. In such circumstances, appeal needs to be decided on merit once for all. But during meantime, if possession has been handed over to the decree holder by filing execution proceeding, then entire purpose of filing appeal would become infructuous. As such, stay needs to be granted to the execution and operation of impugned judgment and decree till decision of appeal. In the result, following order is passed.

**ORDER**

Application (Exh.5) is allowed and stay is granted to the impugned judgment and decree till decision of the appeal.

Buldana  
Date:16.2.2023

(R.N. Mehare)  
District Judge-1,  
Buldana

**Certificate**

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

Name of Steno : D.V.Matre, Stenographer, Grade 1,

Name of Court : District Judge-1 & ASJ, Buldana,

Date of judgment/order : 16.2.2023

Judgment/order uploaded on : 16.2.2023