

Reg. Civil Appeal. NO. 6/2020

(MHBU200000912020)

Kisan Zama Chavan

Versus

Gajanan Shivajirao Kharat

ORDER BELOW EXH.5

(Passed on this 9th February,2022)

This is an application filed by appellant for staying execution and operation of Judgment and Decree passed by learned C.J.J.D. Mehkar in Spl.Civil Suit No.4/2019 dated 01-01-2020. Learned trial court decreed the suit for specific performance of contract for sale filed by present respondent.

2. According to appellant, learned trial court passed the Judgment and Decree and decreed the suit for specific performance of contract for sale filed by present respondent on 01-01-2020. Appellant further submitted that, impugned decree is in respect of execution of sale-deed. He preferred an appeal against the said Judgment and Decree. He is having good case on merit and better chances of success in appeal. He further submitted that, in case Judgment and Decree is executed, then purpose of appeal will become infructuous. Hence, prayed to stay the effect, operation and execution of Judgment and Decree passed by learned trial court.

3. After receipt of notice, respondent appeared and submitted his reply on the application itself. Respondent oposed

the application on the ground that, learned trial court passed the Judgment and Decree on merit, it is correct and passed in right perspective. He further submitted that, suit property is in his possession. He also submitted that, appeal is merit-less, hence, prayed to reject the stay application.

4. Heard both sides. Perused copy of Judgment and Decree filed on record. It reveals that, learned trial court passed Judgment on 01-01-2020 and held that, present respondent/plaintiff is in possession of the suit property and directed appellant/defendant to execute the sale-deed of suit property in favour of respondent/plaintiff by accepting the remaining consideration amount of Rs.75,000/- within two months from the date of order. Judgment and Decree passed by the learned trial court show that, learned trial court upheld the possession of respondent/plaintiff over the suit property. This being the first appeal and is the last fact finding out. Hence, fresh appreciation of evidence on law and facts is needed. Under these circumstances, in case during pendency of appeal Judgment and Decree is executed then, the present appeal will become infructuous. Hence, I am of the view that, appellant has made out a case to stay the execution and operation of the Judgment and Decree passed by the learned trial court. Interest of respondent/plaintiff can be safeguarded by imposing certain conditions. Hence, I pass the following order.

ORDER

1. Application Exh.5 is hereby allowed.

2. Execution and operation of Judgment and Decree passed by learned trial court in Spl. Civil Suit No. 4/2019 dated 01-01-2020 is hereby stayed till disposal of appeal on the condition that, appellant shall deposit cost of the proceeding in court on or before 30-03-2022.

3. Costs in cause.

Dt.09-02-2022

(S.V. Khongal),
District Judge – 1, Mehkar,
District Buldana