

REGULAR CIVIL APPEAL NO. 219/2019

(Old No. 58/2018)

(MHBU200011192019)

Samadhan s/o Punjaji Bahadure + 4

Vs Sulochana Punjaji Bahadure.

ORDER BELOW EXH. 5

(Passed on 21-1-2020)

1. This is an application for grant of stay to execution and operation of judgment and decree passed by Civil Judge (Junior Division), Lonar, in Regular Civil Suit No. 6/2015 dated 17-08-2015. Learned trial court decreed the suit filed by plaintiff for partition and separate possession of the suit property.
2. Applicant/appellant submitted that learned trial court committed grave error while passing judgment and decree. Appellant preferred the present appeal against the said judgment and decree and they are having better chances of success. Further, submitted that during the pendency of appeal in case decree is executed, purpose of appeal will become infructuous. Hence, prayed to stay execution and operation of judgment and decree.
3. Respondent submitted reply on the application on the ground that they also filed cross-objection. Lastly, prayed to reject said application.

4. Heard both sides and perused the judgment and decree passed by Learned trial court. Learned trial court decreed the suit with costs and held that plaintiff is having her 1/10th share and plaintiff no. 2 is having her 1/5th share in the suit property and also directed to send the decree to Collector, Buldana for effecting the partition of agricultural land and also directed to appoint court-commissioner for the partition of house property. This is first appellate court and last fact finding court. Hence, fresh appreciation of evidence on law and facts needs to be done. In case decree is executed purpose of appeal will be come infructuous. Considering the facts of the case, I am of the view that execution can be continued but possession can be stayed till disposal of the appeal. Hence, I pass the following order.

ORDER

1. Application Exh. 5 is allowed.
2. Execution and operation of judgment and decree passed by Civil Judge (Junior Division), Lonar in Regular Civil Suit No. 6/2015, dated 17-08-2018 is stayed for the purpose of possession only.

Sd/-

Dt.21-01-2020

(S.V. Khongal),

District Judge – 1, Mehkar,
District Buldana.

Certificate

I affirm that the contents of this order are same word for word.

Name of court : District Judge – 1, Mehkar.

Name of steno : T.K. Dekhane, Stenographer (Gr.-1).