

REGULAR CIVIL APPEAL NO. 169/2020

(Old RCA No. 5/2017)

(CNR NO. MHBU200010492019)

Anirudh Daulatrao Munhe

Versus

Sau. Sindhubai Vitthal Munde + 1.

ORDER BELOW EXH.5(Passed on this 14th day of December, 2020)

1. This is an application for grant of stay to the execution and operation of the judgment and decree passed by Civil Judge (Junior Division), Lonar, in Regular Civil Suit No. 32/2014, dated 09-08-2016. Learned trial court decreed the suit of plaintiff for removal of encroachment, possession and mesne-profits.

2. According to appellant, present respondent filed suit for removal of encroachment, possession and mesne-profits before the learned trial court against the present appellant. Learned trial court decreed the suit and directed to remove the encroachment and to hand over the possession to plaintiff. Applicant/appellant further submitted that he is in possession of suit portion of land. He is having better chances of success and good case on merit. According to him, in case decree is executed in that event he will be dispossessed and purpose of appeal will become infructuous. Hence, prayed to stay the execution and operation of judgment and decree passed by the learned trial court.

3. Respondent appeared and submitted her reply at Exh. 14 and opposed the application on the grounds that appellant is in illegal possession of the land belonging to respondent. In case, stay is granted, it will cause loss to respondent. Respondent further submitted that appellant is not having case on merit. Hence, prayed to reject the application.

4. Heard both sides and perused record. Respondent is the original plaintiff. She filed suit for removal of encroachment of possession and mesne profits against the present appellant before the trial court. Learned trial court, after hearing the case on merit decreed the suit on 09-08-2016 and directed the present appellant/defendant to remove the encroachment and to give vacant possession of the encroached land to plaintiff. It is admitted facts on record that present appellant is in possession of disputed portion. Under such circumstances, if judgment and decree passed by trial court is executed in that event appellant will be dispossessed and purpose of appeal will be come infructuous. This is first appellate court and last facts findings court. Hence, fresh appreciation of evidence of law and facts is to be done. Considering the facts, I am of the view that execution and operation of the judgment and decree passed by learned trial court needs to be stayed, till disposal of appeal on its own merit. 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. 32/2014, dated 09-08-2016, is hereby stayed, till disposal of present appeal.

Sd/-

Dt.14-12-2020

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

Certificate

I affirm that the contents of this order are word for word as per original.

Name of Court : District Judge – 1, Mehkar.

Name of Steno : T.K. Dekhane, Stenographer (Grade -1)