


Regular Civil Appeal No.20 of 2023

ORDER BELOW EXH.05

(19.04.2025)

1. Read the application. Read the say to it at Exh.22 and 44 on behalf of respondents No.1 to 3. Respondents No.4 and 5 did not appear in spite of service of notice. Therefore, matter proceeded ex-parte against them. Respondents No.6 and 7 failed to file any say to the application. Heard the learned Advocate Smt. Varshikar and Shri. Thorat on behalf of the appellants. Heard learned Advocate Shri. Vishal Jadhav on behalf of the respondents No.1 to 3. No arguments on behalf of respondents No.6 and 7.
2. Learned Advocates on behalf of the appellants submitted that the Court had no jurisdiction to try the suit. The appellants do possess the subject property. If stay is not granted, the decree of partition will be finalized and executed. Therefore, they submitted to allow the application.
3. On the other hand, learned Advocate Shri. Vishal Jadhav on behalf of respondents No.1 to 3 argued that the application is filed to delay the fruits of decree. The trial Court has passed correct judgment and decree. Therefore, he requested to reject the application.
4. The trial Court has passed the decree of partition and separate possession, declaration and perpetual injunction. It appears that defendants not only contested the claim of plaintiffs that Survey No.234 was assigned to Devchand but they also disputed the relationship with the plaintiffs. The trial Court has also noted that



when the land was forfeited, it was in the name of Ghaman. Thus, the appellants have arguable case. Now, whether the evidence on record is reliable and sufficient to establish the contentions of the appellants is the matter of inquiry in course of final arguments and the judgment in the appeal. There can be no duality of opinion that this being the first Appellate Court, the evidence on record has to be appreciated by this Court also. The record also reveals that after passing of the impugned decree the Revenue Authority has been proceeding in pursuance of that decree. It has sent notice to the appellant and other parties for measurement of the land for the purpose of partition and separate possession. Therefore, if stay is not granted, the impugned decree will result into finalization and execution in respect of partition and separate possession. It will cause substantial loss to the appellants. Resultantly, it is appropriate to stay the effect and execution of the impugned decree to the extent of partition and separate possession and the declaratory relief. However, in respect of the relief of perpetual injunction restraining the appellants from alienating the suit property till partition and separate possession, this Court does not deem it fit to stay the same, as it may amount to a permission to the appellants to alienate the suit property. In view of this Court it is appropriate to maintain the status of the property as regards the alienation so that rights of all the parties to the proceeding will be secured. Therefore, this Court does not deem it fit to grant the application in respect of the decree of perpetual injunction restraining alienation. In the result the application deserves to be partly allowed to the extent of decree in respect of partition, separate possession and declaration. Hence, order as follows is passed -



ORDER

1. The application Exh.05 is partly allowed as under.
2. The effect, operation and execution of the impugned judgment and decree is stayed till disposal of the appeal only to the extent of relief of partition, separate possession and declaration.
3. The appellants shall furnish security of Rs.1,00,000/- (Rs. One Lakh only) for the due performance of the decree or order as may ultimately be binding upon them.
4. The application is rejected in respect of decree of perpetual injunction restraining alienation.
5. The parties to note.

Date : 19.04.2025.



(Deepak L. Bhagwat),
District Judge-6, Dhule.

