

In the Court of District Judge - 5, Dhule.

(Presided over by Mr.D.M.Aher)

Application Exh.5

In

Regular Civil Appeal No.43/2024

(CNR No.MHDH010015662024)

(Asha Marathe and Anr. V/s. Vikram Patil and Ors.)

ORDER

The appellants (original defendant Nos.1 and 2) have prayed for stay to the operation and execution of decree dated 11.03.2024 passed by learned Jt.C.J.J.D., Sakri, Dist.Dhule, in Regular Civil Suit No.11/2018.

Background Facts :

2. It is the case of appellants that the respondent Nos.1 and 2 herein (original plaintiffs) had filed the above numbered suit against proforma respondent Nos.3 to 5 herein (original defendant Nos.3 to 5) for possession of field Block No.101 situate at village Bhongaon, Tq.Sakri, Dist.Dhule and alternatively for partition of said property. In the said suit, the respondent Nos.1 and 2 had also claimed relief that agreement for sale executed in favour of appellants is not binding on them. The Trial Court had no pecuniary jurisdiction to decide the suit. However, the Trial Court ignoring the objections of appellants tried and decreed the suit directing appellants to handover the possession of the suit property to respondent Nos.1 to 5 herein. Aggrieved by the said judgment and decree, the appellants have filed the present appeal. It is stated that the appellants have good chance of success in the suit. The appellants are in

possession of the suit property. They have developed the suit property. If the decree is executed, the appellants will lose the possession of the suit property, resulting in irreparable loss to them. Hence, this application to stay the execution and operation of the impugned judgment and decree.

3. The respondent Nos.1 and 2 appeared, but they did not file a reply to the application.

4. The respondent Nos.3 to 5 opposed the application on the grounds that the impugned judgment and decree are legal and proper. There are no grounds to stay the decree. It is stated that the appellants are illegally possessing the suit property since from long time. Hence, they prayed to reject the application. It is alternatively stated that if stay is granted, the appeal may be directed to be disposed off within time bound period.

Submissions :

5. The learned advocate Mr.S.S.Thakwani for the appellants submits that undisputedly the appellants are in possession of the suit property from long period. He submits that the Trial Court has decided the suit without jurisdiction. He submits that the appellants have parted with huge amount of consideration. He submits that the appellants have developed the suit property by incurring the expenses of lakhs of rupees. He submits that the appeal is statutory right and to avoid the appeal from becoming infructuous, stay is necessary. He submits that if the decree is not stayed, the appellants will lose the possession of suit

property. Ultimately, they will suffer irreparable loss. Hence, he prayed to allow the application. In support of his submissions, he relied upon Babasaheb Dhondiba Kute V/s. Radhu Vithoba Barde, 2024 (2) C.C.C. 51 (S.C.) and Mool Chand Yadav V/s. Raza Buland Sugar Company Limited, A.I.R. Online 1982 S.C. 13. In Babasaheb's case, it is held that there is no bar for triable to enter into an agreement for sale of land. In Mool Chand's case, it is held that the judicial approach requires that during the pendency of the appeal, the operation of order having serious civil consequences must be suspended. There cannot be dispute about this proposition of law.

6. On the other hand, the learned advocate Mr.A.S. Abhyankar for respondent Nos.3 to 5 submits that the appellants' possession on the suit property is based on agreement for sale. He submits that the suit property is a new tenure land and its alienation by any manner is prohibited by law. He submits that the possession of appellants on the suit property is illegal. He submits that the grant of stay will tantamount to protection of illegal possession. He submits that the appellants' suit for specific performance is already dismissed. He submits that the appellants have remedy to seek appropriate relief in appeal against the judgment and decree in suit for specific performance. Hence, he prayed to reject the application. He alternatively submits that in case stay is granted, the appellants be directed to deposit the balance amount as mentioned in agreement for sale as a deposit and appeal may be directed to be decided within specific period.

Reasons :

7. Order – 41 Rule - 5 of the C.P.C. deals with stay to the execution of decree. Sub-Rule (1) of Rule – 5 empowers the appellate court to grant stay to the execution of decree, whereas Sub-Rule (3) of Rule – 5 of C.P.C. lays down the parameters for grant of stay. It reads thus,

“(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(3) No order for stay of execution shall be made under Sub-Rule (1) or Sub-Rule (2) unless the Court making it is satisfied -

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.”

8. Thus, in order to seek stay to the execution of decree, the appellants have to satisfy the aforesaid parameters. The decree is for possession of the suit property. The respondent Nos.1 and 2's suit for the possession of suit property came to be decreed.

The Trial Court in the impugned judgment observed that the appellants are in unlawful possession of the suit property.

9. The appellants by seeking stay to the execution of decree are indirectly claiming protection of their possession over the suit property. As mentioned above, the Trial Court observed that the appellants are in unlawful possession of the suit property. The appellants case about possession over the suit property is based on agreement for sale. The appellants had filed separate suit bearing Spl.C.S.No.08/2019 for specific performance of agreement for sale. However, the copy of judgment of said suit shows that the said suit came to be dismissed. The Trial Court in the said judgment observed that the agreement for sale is illegal.

10. The suit property is occupancy Class-II land. In other words, it is a new tenure land which requires permission of competent authority for transfer. As laid down in Babasaheb Kute's case, the agreement for sale of such property may be permissible. However, the question is about handing over of possession of such property. The handing over possession of occupancy Class-II land without permission of competent authority is not permissible. Thus, prima facie the appellants' possession over the suit property is illegal.

11. The appellants case about possession over the suit property on the basis of agreement for sale also does not advance their stand. The agreement for sale is executed before Notary. It is not a registered document. It is well settled that in

the State of Maharashtra, if agreement for sale contains stipulation about handing over of possession, such agreement for sale falls in the category of conveyance and ultimately requires registration. However, the agreement for sale is unregistered document. Thus, prima facie the appellants possession on the basis of unregistered agreement for sale cannot be said to be legal. If it is so, how the appellants can claim protection of their possession over the suit property on the basis of notarized agreement for sale, that too in respect of occupancy Class-II land.

12. Apart from the above, it is clear that the appellants have filed separate appeal against the judgment and decree in a suit for specific performance of contract. They are claiming protection of their possession on the basis of agreement for sale. Therefore, the appropriate remedy for the appellants to seek the protection of their possession is to file application for appropriate relief in the said appeal.

13. In view of above discussion, I find that the appellants have not made out case for stay to the execution of decree. Prima facie the appellants' possession over the suit property is not lawful for two reasons. Firstly, they have taken the possession of suit property which is occupancy Class-II land without permission of competent authority. Secondly, the agreement for sale which confirms their possession over the suit property is not registered. It is not the case that the appellants have parted with the entire consideration of Rs.46,00,000/- of the suit property. It

seems that they have paid amount of Rs.13,40,000/-. It is not the case that the appellants have deposited the balance consideration in the Trial Court. Thus, there is no equity in favour of appellants. The grant of stay to the execution of decree will amount to protection of possession of appellants, which is prima facie unlawful. Considering all these circumstances, in my opinion, no substantial loss will be caused to the appellants, if decree is not stayed. Therefore, the application is liable to be rejected.

14. In view of above, the application Exh.5 stands rejected. No order as to costs.

(D.M.Aher)

Date : 06.07.2024.

District Judge-5, Dhule.

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CERTIFICATE

I certify that the contents of this P.D.F. File are word to word as per Original Judgment/Order.

Name of the Stenographer : J.S.Jain.
Name of the Court : Court of District Judge-5, Dhule
Order directly typed on dias : 06.07.2024.
computer.
Order checked and signed by : 06.07.2024.
Presiding Officer
P.D.F. Uploading Date : 06.07.2024.

Sd/- xxx

Stenographer(Grade-I)