

IN THE COURT OF DISTRICT JUDGE-2, JALNA
REGULAR CIVIL APPEAL No.25 OF 2026

**Madan Madhavrao Kayande
and another**

**.... APPELLANTS
(Original Defendants)**

Versus

Subhash Rushindar Kayande

**.... RESPONDENT
(Original Plaintiff)**

Appearance :

Shri.S.S.Kalbande, the learned Counsel for the appellants

COMMON ORDER BELOW EXH.7 & EXH.15
(Delivered on : 30.04.2026)

. This is an application for stay to the execution of Judgment and decree passed in R.C.S.No.535 of 2013 dated 16.07.2024.

02. The appellants have challenged the decree of the trial court on the ground that it was exparte. The appellants were not served with the suit summons and they have not filed appearance through advocate. The report of summons showing the service on their mother is false. The appellants could not contest the suit. In case, the execution of the decree is done, they will suffer an irreparable loss.

03. The respondent failed to file any reply. However, he argued by submitting that the execution proceeding is already filed in which the appellants appeared and filed application to stay the execution. The measurement of the suit property is done with the notice to the appellants. To delay of execution of decree, this application is filed.

04. Heard both the sides. Perused the copy of impugned Judgment and Decree, copy of the plaint and orders below the report of summons, copies of evidence etc.

05. The suit of respondent was for removal of encroachment and possession of suit property. The same is decreed by Judgment dated 16.07.2024. It is seen from the Judgment that the suit was proceeded exparte against the appellants by observing that the appellants appeared in view of summons. However failed to file their written statement and contest the suit. This shows that the suit was not decided on merits. The contention of appellants that they were not duly served and neither they appeared through the advocate concerned is required to be decided on merit.

06. It is statutory right available to the appellants to prefer appeal. Their right would be frustrated if the impugned decree passed by the learned trial Court is executed against them. In such

circumstances, the appeal would become infructuous. Thus, he will be deprived of his rights. Therefore, I find the appellants entitled for the relief of stay to the execution of impugned Judgment and decree passed by the learned trial Court on 16.07.2024. Hence, I pass the following order;

ORDER

- 1) The applications Exh.7 and Exh.15 are hereby allowed.
- 2) The execution of impugned Judgment and order passed by the learned 3rd Joint Civil Judge (S.D.) Jalna in R.C.S.No.535 of 2013 dated 16.07.2024 is hereby stayed, till the final disposal of the present appeal.
- 3) The learned trial Court be informed accordingly.
- 4) In above circumstances, the appeal is expedited.
- 5) Appellants to expedite filing of paper book.

Date: 30.04.2026.

(Nazera S. Shaikh)
District Judge-2, Jalna.