

ORDER BELOW EXH. 240 IN R.C.S.No. 169/2022

Plaintiffs filed this application under Order 41 Rule 5 (2) of Civil Procedure Code. Plaintiffs contended that their suit is dismissed, so they will file appeal against this decision. So prayed to stay the judgment till appeal period.

2. Learned advocate for defendants filed say and stated that application is not tenable as per law. Plaintiffs led evidence and as they failed to prove their claim, suit is dismissed. As suit of the plaintiffs is dismissed there is no executable decree is passed in their favour. Therefore said application is liable to be rejected.

3. Heard both the learned advocates. Learned advocate for plaintiffs argued that plaintiffs have their houses, cattle and crops in suit property. If decree not stayed plaintiffs will suffer loss. So prayed for stay of judgment till period of appeal.

4. Learned advocate for defendants argued that by the said judgment executable decree is not passed. So plaintiffs or defendants are not entitled for execution of decree. The provision of Order 41 Rule 5 (2) of Civil Procedure Code applicable only in the case of executable decree. So prayed for rejection of plaintiffs application.

5. Plaintiffs not stated the facts in their application that they have possession over suit property by way of houses, cattle and crops. They also not stated that if judgment not stayed they will suffer loss. I have perused Order 41 Rule 5 (2) of Civil Procedure Code. According to said provision execution of an appealable decree can be stayed if the Court is satisfied by conditions stated in sub rule 3. Plaintiffs filed said suit for declaration of title by adverse possession and for permanent injunction. The suit of the plaintiffs is dismissed. So no execution proceeding will lie from said judgment by

plaintiffs as well as by defendants. As per Order 41 Rule 2 (5) it is stated that where the appellant fails to make deposit of furnish the security specified in sub-rule (3) of Rule 1 the court shall not make and order staying the execution of the decree.

6. So no such execution will lie from said judgment question of stay of judgment does not arise. So application is rejected.

Date 16.04.2026
Place: Gadhinglaj

D.M.Pawar
Civil Judge Junior Division
Gadhinglaj