

MHLA010009052025



Order below Exh.5 in R.C.A.No.49/2025
Shubham Vs. Priyanka & Ors.

This application is filed under Order XXXXI Rule 5 of the Code of Civil Procedure by the appellant to stay the effect and operation of impugned judgment and order passed in Spl.C.S. No.117/2017.

2. In short the contention of the appellant is that the learned trial Court has decreed the Spl.C.S.No.117/2017 and thereby granted the injunction against the present appellant. The respondents are trying to execute the decree and in that event the appellant will loose the possession. The appellant has fair chance of the success in the appeal. Therefore, he has prayed to stay the effect and operation of the impugned judgment and decree.

3. The application is contested by the respondents on the ground that the learned trial Court has considered the evidence and has affirmatively given the findings in favour of present respondents. The appellant is not having possession over the suit property and therefore, the decree of injunction cannot be stayed. Further, it is contented that the minors property was sold without prior permission and therefore, the said transaction is not binding upon the minor. Accordingly, the respondents prayed to reject the application.

4. I have heard the learned advocate of appellant and respondents. Perused the impugned judgment. It is seen that the

plaintiff has challenged the sale transaction with respect to the portion of the suit property which was purchased by her grand father. The learned trial Court after appreciating the evidence brought on record by both the parties declared that the suit property is owned by the plaintiff and defendants Nos.1 to 3 and 5 were restrained by decree of perpetual injunction from obstructing the possession of plaintiff over the suit property. So, if the decree passed by the learned trial Court is considered then no question of losing possession of appellant would arise, in case of execution of the decree. In other words, the decree passed by the learned trial Court is not in respect of recovery of possession. Therefore, even though the decree is executed the appellant will not lose the possession. The learned advocate of appellant tried to convince this Court that the suit property is sold to the defendants and thereby given possession of the suit property. Hence, if the decree of injunction is executed they will lose the possession. Having considered the observations of learned trial Court and its finding in favour of the plaintiff that the suit property was sold by the plaintiff's mother when she was minor without seeking prior permission of the Court, therefore, the sale transaction is void ab initio. The defendants would not get legal possession over the suit property. Whether the observation and findings given by the learned trial Court is based upon the proper appreciation of evidence and supported by law is to be considered at the final hearing of this appeal. At this prima facie stage, the circumstances

should be regarding irreparable loss which would caused to the appellant if execution and operation is not stayed. As stated herein above, the decree passed by the learned trial Court is not regarding delivery of possession, therefore, the defendants would not loose possession if the impugned judgment and decree is not stayed. Accordingly, the appellant has no prima facie case of loosing possession over the disputed property. Hence, I find that it is not just and reasonable to stay the execution and operation of the impugned decree. Accordingly, following order is passed.

ORDER

Application Exh.5 stands rejected.

Date-13/01/2026

(P. P. Kestikar)
Adhoc District Judge-2,
Latur.