

MHLA010030432025



Order below Exh.5 in R.C.A.No.106/2025
Suganchand (died) through Lrs. Vs. Vishwasrao & Ors.
(Passed on this 23rd day of June, 2026)

Challenged, in this appeal is to a judgment and decree, passed by learned 3rd Jt. Civil Judge Sr.Dn., Latur in R.C.S. No.823/1986 dated 17.05.2025. The suit was for the declaration of ownership, possession, perpetual injunction and to receive mesne profit. Learned trial Court was pleased to decree the suit. Aggrieved by it, defendant No.1 is now in appeal before this Court. Parties are referred accordingly they appeared before the appeal.

2. This application preferred by the appellant on the ground that learned trial Court has erroneously decreed the suit in favour of the respondent No.1. Original appellant was reported to be dead and his legal representatives are filed this present application and prayed for stay the effect, operation and execution of judgment and decree.

3. Heard, learned advocate on behalf of respondent No.1 at a glance. According to him, the appellants are not having any merit in the appeal preferred by them and the fate of the appeal is to be resulted into the dismissal. He further submitted that the decree has been passed by the learned trial Court is about the declaration of title, possession and mesne profits. As such the mesne profit decree is a money decree in the eyes of law. The amount of mesne profit is calculated as per the judgment and decree to the tune of Rs.75,600/- up till now, which the appellants

have to deposit the same before pressing the present application as per Order XXI Rule 1 (3) and 5 (5) of the Code of Civil Procedure.

4. Per contra, the learned advocate on behalf of appellants vehemently argued that the decree has been passed by the learned lower Court is about the declaration of title, possession, perpetual injunction and mesne profits. He further submitted that mesne profits is not a money decree in the eyes of law. In support of his contention, he relied upon the ratio laid down by the Hon'ble Lordship in case of **Damodara Nayak Vs. Narayana Naika, AIR 2006 KER 260**,. According to citation the Hon'ble Lordship held that, "*the mesne profits being in the nature of damages goes alongwith the recovery of possession. Decree for mesne profit as such cannot be equated with a money decree. Wrongful possession of the judgment debtor is the very essence of a foundation of a claim for mesne profits.*"

5. From the rival submissions of both the sides, the following points arise from my consideration, these points my findings and reasons are as under:

Sr.No.	Point	Finding
1	Whether the execution and operation of decree passed in R.C.S.823/1986 is required to be stayed ?	...Yes.
2	Whether the appellants would suffer irreparable loss if decree is not stayed ?	...Yes.
3	What Order?	Application is allowed

REASONS

As to Point Nos.1 to 3:-

6. All these points are connected with each other therefore, they are considered at the same time.

7. Considering the rival pleadings and the judgment and decree passed by the learned trial Court. Admittedly, the impugned judgment and decree has been passed on the prayer of declaration of ownership, possession, perpetual injunction and to receive mesne profit. The present appeal has been filed on the ground that the appellants are in possession of suit property. Therefore, valuable rights of the appellants are involved in the suit property. Accordingly, if the impugned decree is executed then the appellants would loose their valuable rights.

8. Considering the impugned judgment and decree, it is crystal clear that the learned trial Court has decreed the suit in respect of title and possession of suit property in favour of respondent No.1. Thereafter, during the pendency of the appeal if the appellants have been dispossessed from the suit property then certainly they would loose their valuable rights over the suit property. On the other hand, if the execution of the decree is stayed no irreparable loss would be caused to the respondent No.1 as they will be entitled for execution and decree subject to final outcome of this appeal. Therefore, to avoid the multiplicity, I find it just and proper to stay the execution and operation of the impugned decree. As the decree of mesne profit is calculated as

per the judgment and decree to the tune of Rs.75,600/-, thus, the appellants are directed to deposit its half amount before this Court. Accordingly, on these reasons, I record my affirmative findings to Point Nos.1 and 2 and in answer to Point No.3, I proceed to pass following order-

ORDER

1. The application is allowed.
2. After depositing half amount out of total mesne profit of Rs.75,600/- the execution and operation of judgment and decree in R.C.S.No.823/1986 passed by the learned 3rd Jt. Civil Judge Sr.Dn., Latur, is hereby stayed till next date.
3. Inform to the learned trial Court.
4. The parties are expected to complete the final hearing of this appeal within period of two months from today.

Date-23.06.2026

(Sajid A.Syed)
District Judge-4,
Latur.