

ORDER BELOW EXH. 5 IN R.C.A. NO. 16/2016

1] Read application filed by these appellants at Ex. 5 and then, supporting affidavit of appellant No.1 to it at Ex. 6 and then, seen the documents so produced by these appellants below list Ex.4 and then, read the say of respondents to this application at Ex. 15. Seen the impugned order and decree, dated 6-8-2016. Also gone through the record of the lower Court, pertaining to the suit. Heard both the sides.

2] This application is so made by these appellants to stay the execution of the order and decree, dated 6-8-2016. Advocate for appellants has as much the same submissions what he has made in this application and besides that, he submitted that, in fact, these respondents do not have any claim over any such land S. No.54/1/1, admeasuring 3 H- 22 Ares, since, at no time, they were owners of it and in fact, the same land was so owned and possessed by these appellants and their ancestors and for that, he drew my attention to the sale-deeds at Ex. 34 and 35 from the record of the suit and the copy of the previous Judgment and decree at Ex.40 and further, he minutely read the oral evidence of P.W. No.1- Hemant Ramchandra and then, P.W. No.2- Tukaram Ganpat, the Surveyor. He submitted that the entire record so brought by these respondents before the lower Court would indicate that the land that they contend to be of their ownership, was never so owned and possessed by them, since, the western

boundary of the land so purchased by their father never tallies with the record that prevailed all over the years. He, further, submitted that, in fact, the learned lower Court has misread the entire evidence and then, drew some unwarranted inferences against these appellants causing a total failure of justice and then, denying the rightful claim of these appellants over the suit land. He, therefore, urged for such staying the execution of the decree.

3] On the other hand, advocate for respondents submitted that these appellants have suppressed many material facts and in fact, the learned lower Court has rightly appreciated the entire evidence and these appellants and their ancestors were, though, the Jahagirdars of land situated at village Kalegaon, they themselves do not know where their lands situate and simply, on the basis of some inconsistent record maintained by the Revenue Authorities, they have taken undue advantage of all those facts and then, they are making claim over the suit-land. He submitted that these respondents have led very consistent evidence before the lower Court as to their claim of ownership and possession and therefore, such a decree came to be passed against appellants. He, therefore, urged for rejection of the application.

4] After hearing both the sides and going through all such record, so produced before this Court, I find that a decree, declaring these respondents to be the owners of the suit-land and then, restraining these appellants, perpetually, from causing any sort of interference in possession of these respondents has been

passed by the lower Court. The impugned Judgment of the learned lower Court shows that these respondents have been held to be successful on all counts in establishing their such claim of ownership and possession and therefore, such a decree came to be passed against these appellants. The important question is as decree being so passed, declaring these respondents to be the owners of the suit-land and then, restraining these appellants from causing any sort of interference in possession of these respondents, would certainly put these appellants in difficult situation, if the execution is not stayed, since, they have their inherent claim of ownership and possession by way of inheritance and if it is so and particularly, the claim of these respondents being only through their father by way of purchase of any such land, which is made the subject of this dispute; then, it is very difficult either to let the decree to remain as it is during the pendency of this appeal; since, if it is put under execution, then, they will be the appellants, who will be at serious loss and therefore, considering the apprehension of these appellants and the facts so brought on record by way of this appeal, this Court finds that it will be just and proper to stay the execution of it, till the disposal of the appeal. Order accordingly.

Ahmedpur
Date:- 21-10-2016

(S.C. Magare)
District Judge-1,
Ahmedpur.

Date:-

Ahemadpur.