

CNR No. MHPU1400-0269-2024**Laxman Shankar Gaikwad and Ors.****Vs.****Tulsabai Shankar Nanawar and Ors.****ORDER BELOW EXH.05**

This is application filed by appellants under Order 41 Rule 5 of CPC for stay of judgment and decree passed by Ld.Trial Court.

2] Read application and reply. Heard both Ld. Advocates. It is submission of Ld.Advocate for appellants that respondents are doing illegal activities. They tried to create third party interest. Suit property is in danger. So, interim protection needs to be granted.

3] On the other hand, it is submission of Ld.Advocate for respondent Nos.1 and 2 that, suit is decree on merit after giving opportunity to both parties to lead their evidence. Respondent Nos.1 and 2 are daughters. Appellants are son. Suit properties are ancestral properties. Appellants came with the case that, there is oral partition. They have spend for the marriage of respondent Nos.1 and 2 and they have relinquished their rights. Ld.Trial Court has held that, appellants failed to prove their defence and decreed the suit. Appellants have registered lis-pendence. So, there is no possibility of transfer. Suit properties are in possession of appellants.

Thus, the allegation of appellants that respondent Nos.1 and 2 are doing illegal activities is contrary to the factual position in this case. After decision of RCS No.476/2013, fresh suit for declaration bearing RCS No.15/2021 and for partition bearing Special Suit No. 278/2023 has been filed against respondent Nos.1 and 2. In both these suits, appellants have prayed for stay. Appellants have not obeyed the interim order passed by this Court dated 03/04/2024. The interim stay is already vacated. Respondent Nos.1 and 2 have not filed execution petition. Precept has not been sent for execution of decree. Therefore, appellants are not entitled for stay.

4] Perused material placed on record. As pointed out by Ld.Advocate for respondent Nos.1 and 2, interim stay order has been passed by my Ld. Predecessor on Exh.5 dated 03/04/2024 which can be reproduced as under :-

Execution of judgment and decree dated 23.02.2022 in R.C.S. No.476/2013 passed by Ld.Civil Judge Jr. Division, Baramati, hereby stayed till 01.07.2024 or till the disposal of appeal, whichever is earlier.

5] The above order is continue till date. Admittedly, respondent Nos.1 and 2 have not filed execution petition. The fact that, appellants have filed RCS No.15/2021 and Special Suit No.278/2023 is not denied by appellants. Appellants have also not denied that they have filed stay

