

**Common Order below Exh. 8 and 24 in Civil Appeal No.
27/2023.
CNR No. MHRT010002602023**

Madhavi Manohar Pawar etc. 3	Appellants
<i>Versus</i>	
Mahesh Parshuram Shinde etc. 2	Opponents

1. Application Exh. 8 is filed by the appellant for staying the judgment and decree passed by Ld. Trial Court in RCS No. 55/2012 dated 28.02.2023.

2. Appellants/original defendants have filed this appeal against decree of declaration of ownership of suit property described in plaint para 1A (land bearing S.No. 222, H.No.2 situated at village Ozare, Tal. Sangmeshwar, Dist. Ratnagiri) and 1B (Gram Panchayat house No. 16B of village Ozare Khurd) and delivery of possession of house property situated in it. Ld. Trial Judge partly decreed the suit on 28.02.2023. Feeling aggrieved by that decision this appeal has been preferred. Appellant has very good case and he has every hope of getting success in it. But final decision of this appeal may take some time. Ld. Trial Judge while partly decreeing the suit declared the appellants as owner of the suit property and asked the defendant to deliver its clear and vacant possession and also imposed injunction against defendant.

3. The respondent is having knowledge of this appeal filed against said decision. They are purposely avoiding to

appear in this appeal. They had misled the trial Court and obtained possession of suit property on 13.03.2024. Hence, it has affected merits of this appeal. Due to that action this appeal would be in-fructuous. Therefore, appellant prayed that pending hearing and decision of this appeal respondent shall not transfer that property to third party and not to create third party interest in that property. Till decision of appeal they shall keep the disputed property in as it was. Application Exh. 24 is filed for delivery of possession of house and valuables stored in that house.

4. Respondent No.1A filed say to both these applications at Exh. 26. It is his contention that RCS 55/2012 was filed in respect of two properties. But suit was partly decreed in respect of house No. 16B situated at village Ozare Khurd. Possession of that property was handed over by the Trial Court by following due procedure. Under these circumstances no question arises to stay the further proceedings of delivery of possession. On that count this application deserves to be rejected. The trial Court has decided the suit on merits. It has declared that plaintiff and their heirs are owner of that property and defendants are restrained by imposing injunction against them. In this appeal there is no reason arisen to stay that order. Hence, that prayer may be rejected. Defendants were never in possession of the suit property. There was possession of plaintiff over it and this fact has been proved before the Trial Court. The possession of suit property already delivered to respondent can not be taken away and delivered to appellant as prayed. Therefore, there is

no reason to give stay to judgment and order of Trial Court. The order of Trial Court is already executed properly and legally. No loss going to be caused to the defendants by it. Therefore, it would not be proper to grant any stay to that order. Hence, both these applications may be rejected.

REASONS

5. Pending hearing and decision of this appeal if respondent would transfer that property in favour of third person or would create third party interest it will definitely create complication in the decision of this appeal. Under these circumstances, if such order of temporary injunction is passed in favour of appellant till final decision of this appeal, no prejudice will be caused to respondent. On the other hand, if temporary injunction as prayed will not be granted, respondent may transfer suit property to third person or would create third party interest in it. In that event further complications would arise in this appeal. Possession of suit house is already given to the respondent.

6. The appellant in his application failed to mention which valuable articles were lying in that house. List of those articles and their value is not mentioned. Under these circumstances, no question arises to take back possession of suit house from the respondent and to deliver it in possession of appellant while pending hearing and decision of this appeal. Hence, I pass following order.

O R D E R

1. Application Exh. 8 is allowed.
2. Application Exh. 24 is rejected.
3. Pending hearing and decision of this appeal respondents are restrained from transferring suit property to any third person and not to create any third party interest in it.

Ratnagiri
Date:- 15.07.2025

(S.S. Gosavi)
Principal District Judge,
Ratnagiri.