

CNR NO.MHSI010004072016



**REGULAR CIVIL APPEAL NO.106.2016
(Krishna Mestry Vs. Rupesh Namnaik)**

ORDER BELOW EXH. 34

(Dated 02-05-2025)

The applicant/appellant/original defendant No.14 has filed this application for grant of stay to the effect and operation of the judgment and decree passed in Regular Civil Suit No. 78/2008 by the Civil Judge, Junior Division, Malwan till the decision of the appeal. The non-applicants No. 1 to 3/original plaintiffs filed their reply (Exh.38) to the said application. They have strongly objected to the said application.

2. The original plaintiffs have filed the suit for partition and separate possession. The appellant/original defendant No.14 resisted the claim before the trial court. The learned trial court has granted 1/6th share in common to plaintiffs No.1 to 3, 1/6th share in common to defendants No. 1 and 2, 1/6th share to defendant No.3, 1/6th share in common to defendants No. 4 to 8 and 1/3rd share in common to defendants No.9 to 11 jointly in the suit property, excluding property described at Sr. No.29, 30 and 32 and accordingly directed partition and separate possession of the same. The learned counsel for the appellant argued that the learned trial court has not properly appreciated the evidence on record and came to a wrong conclusion. He submitted that, the property described at Sr. No.29, 30 and 32 has been wrongly declared as the property belonging to defendant No.19. He urged

that, there is also no proper findings regarding the non-joinder of parties, when the suit is for partition and separate possession. He argued that the trial court has committed an error by decreeing the suit, which is contrary to the provisions of law.

3. The appellant has challenged the judgment and decree referred to above on various legal as well as factual grounds. The very purpose of filing the appeal would be frustrated, if the execution of the judgment and decree is not stayed. Considering, the material on record and the submissions of the appellant, the grounds raised can be decided only after hearing the parties on merits and the disputed questions can be determined after considering the entire evidence on merits. At this stage, the appellant has made out a prima-facie case for grant of stay to the limited extent of possession. It being a decree of partition and separate possession, the entire decree cannot be stayed, as the final decree proceeding would take its own time, however, till the decision of the appeal, the impugned judgment and decree deserves to be stayed to the extent of possession, by imposing certain conditions on the appellant. Otherwise, the entire purpose of filing the appeal would be frustrated. Hence, I pass the following order.

ORDER

1. The execution of the decree to the extent of possession in Regular Civil Suit No. 78/2008 is stayed until final decision of the appeal, on depositing the costs of the suit, if any, and on furnishing security by the appellant in the sum of Rs. 25,000/- (Twenty Five Thousand Rupees

only) before the trial court on or before 09.06.2025 for the due performance of the decree or order, as may, ultimately be binding upon him.

2. Costs in cause.

Date:-02.05.2025.

(H.B. Gaikwad)
Principal District Judge,
Sindhudurg at Oros