

IN THE COURT OF DISTRICT JUDGE-1, ISLAMPUR
DISTRICT SANGLI

(Presided over by Shekhar C. Munghate)

Reg.Civil Appeal No.59/2018

Madhukar Vrs. Abhijit (Dead) & others.

Order (Below Exh.5)

(Passed on this 16th day of November 2018)

The present appellant had filed this application for grant of stay to the effect and operation of the common Judgment and decree passed in Special Civil Suit No. 11 of 2013 and Regular Civil Suit No. 524 of 2014 by the learned Civil Judge, Senior Division, Islampur, District Sangli on 18.04.2018.

2. The learned counsel for appellant contended that he had challenged the Judgment and decree passed in Special Civil Suit No. 11 of 2013 by the learned Civil Judge, Senior Division, Nagpur on 18.04.2018 along with the Judgment and decree in Regular Civil Suit No.524 of 2014 which were decided by the learned trial Court by passing common Judgment, the Judgment and the decree is prima-facie illegal and erroneous, counsel for the appellant further contended that, if the Judgment and decree is not stayed, there will be multiplicity of litigation and the possibility of vacation of possession of the appellant over the suit property cannot be ruled out. The learned trial Court had decreed the suit against the present appellant, present appellant to hand over the vacant possession of suit property within two months. For protecting the nature of suit property and no prejudice would cause to anybody if the Judgment and decree is stayed.

3. On the contrary the respondent No.1-A, 1-B and 3 has

filed the reply at Exh.21 contending that the appellant has no cause or sufficient ground for grant of stay. The appellant in his application nowhere demonstrates the irreparable loss. The appellant is having no right over the suit property, the appeal is filed only to kill valuable time and to refuse the fruits of the decree to the respondent. Therefore, he contended to reject the application. And alternatively prayed that if the stay is granted the matter be expedite and be disposed off within six months from today and he is ready to file private paper book.

4. Upon considering the submissions of both the parties, and after going through the Judgment and decree of the learned trial Court, it appears that the appellant is in possession of the suit property, the present appeal is continuation of suit, this is the last facts finding Court, therefore, I found force in the submissions made at bar by the learned counsel for the appellants/applicants, the contention of learned counsel for the respondents opposed the application, however, the execution of decree can be stayed looking to the nature of the suit. Looking to the fact that the respondents and the appellant agrees for disposal of the appeal as early as possible and the respondents are ready to file private paper book, the matter can be expedited. Therefore, for protecting the nature of suit property and no prejudice would cause to anybody if the Judgment and decree is stayed till final disposal of the present appeal. Hence, I pass the following order.

ORDER

The effect, implementation and giving effect to common Judgment and decree passed in Regular Civil Suit No.524 of 2014 and Special Civil Suit No.11 of 2013 by the learned Civil Judge, Senior Division, Islampur District Sangli dated 18.04.2018 is hereby stayed till final disposal of the present appeal on the following conditions:-

- a] The appellant to deposit amount of costs within fifteen days from today;
- b] Both the parties are directed to expedite the final hearing of the mater, so as to enable this Court to decide the appeal at the earliest possible.
- c] Inform the trial Court accordingly.

Islampur
Dated: 16.11.2018

Sd/-xxx
(Shekhar C. Munghate)
District Judge - 1,
Islampur, District Sangli