

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS**

**JUDGE, VADUJ, AT : VADUJ, DIST. SATARA.**

**Regular Civil Appeal No. 11/2021**

**Chandkiran Sadashiv Nalawade etc.**

**Vs.**

**Sharad Duryodhan Pawar etc.**

**ORDER PASSED BELOW APPLICATION AT EXH. 7**

(Passed on this 16<sup>th</sup> day of June, 2023)

Being aggrieved by the judgment and decree passed by C.J.J.D. Mhaswad (hereinafter referred to as “the Ld. Trial Court) in Reg. C.S.No. 86 of 2009 dated 01.03.2021, the appellants who were original defendants have preferred this appeal. They have filed application under consideration to stay the execution of decree under appeal on the grounds of objection raised in appeal memo as well as application under consideration.

2. Notice was issued to the respondents i.e. original plaintiff to file say to the application under consideration. He has filed his say at Exh.12 to resist the application.

3. After going through the contents in the application and say filed by the respondents and material available on record following points arise for my determination and I have recorded my findings thereon with reasons thereto which are as follows :

POINTSFINDINGS

1. Whether there are sufficient grounds :  
to the satisfaction of this Court to stay  
execution of decree under appeal. Yes.
2. What order ? : Application is allowed.

REASONSAs to Points no.1 & 2:

4. When the application under consideration came for hearing, the Ld. Counsel for appellants-defendant explained entire background of the suit claim under appeal. He submitted that the respondent is contending that the original owner i.e. respondent no.2 has executed an agreement to sell in respect of suit property in his favour on 11.12.2008. The original owner avoided to execute the sale-deed in respect of suit property though he expressed his ready and willingness to perform his part of contract. He further averred that the original owner though was aware of the fact that an agreement to sell is executed in favour of respondent no.1, executed sale-deed in respect of the suit property in favour of appellants-defendant. According to him, the execution of sale-deed in favour of appellants is merely to defeat the rights of respondent no.1. On the other hand, the appellants original - defendants have come with the case that there was no any intention between original owner i.e. respondent no.2 and respondent no.1 to execute sale-deed in respect of the property in question. The original owner who was in need of money raised hand-loan from respondent no.1 and to secure the repayment of said loan, the document in question is brought into

existence. The said document is the document for securing repayment of loan, therefore, it cannot be said that the agreement in question is enforceable by law. In addition to it, the appellant also put forth his case before Ld. Trial Court that he is bonafide purchaser of the suit property for value without notice. The Ld. Counsel invited my attention towards the observations of Ld. Trial Court in support of finding and grounds of objection raised in appeal memo and submitted that Ld. Trial Court has not appreciated the evidence available on record in its true spirit. The conclusion drawn in respect of execution of agreement as well as entitlement of respondent no.1 – plaintiff to seek the relief of specific performance is inconsistent to the facts and circumstances available on record. The Ld. Trial Court has not exercised its discretion in judicious manner. He pointed out that the respondent no.1 has filed Execution Petition in Ld. Trial Court, the appellant has raised various grounds of objections based upon factual aspects as well as legal aspects and questioned the legality of decree under appeal. If the decree under appeal is executed, then the very purpose to file the appeal on the part of appellant will frustrate. It will also result in multiplicity of proceedings. In such circumstances, stay for execution of the decree under appeal is absolutely necessary.

5. The Ld. Counsel for respondent no.1 vehemently submitted that the defendants were aware of the fact that the original owner has executed an agreement to sell in respect of the suit property in his favour. It was necessary on the part of appellant – defendant to inquire in respect of title of the suit property. They have

not followed the procedure in this regard and got executed the sale-deed in question merely to defeat their rights. Respondent no.1 has adduced oral as well as documentary evidence in Ld. Trial Court. The Ld. Trial Court appreciated whole evidence on record in its true spirit and has come towards the conclusion that respondent no.1 is entitled to seek the relief of specific performance. The decree under appeal is in respect of immovable property. If the execution of decree is stayed then heavy loss will be caused to respondent no.1. He also submitted that he is ready to proceed with this appeal as expeditiously as possible and prayed for rejection of the application.

6. I have gone through the judgment under appeal on the background of grounds of objection raised on the part of appellant in appeal memo and submissions of Ld. Counsel for both the appellants as well as respondent. The respondent no.1, the original owner has executed sale-deed in respect of the suit property in favour of appellant. As per contention of respondent no.1, the agreement under consideration was executed by original owner in his favour. Whether the agreement in question is enforceable by law needs to be considered on the background of various pleas averred on the part of appellant in Ld. Trial Court. The conduct of the original owner who is respondent no.2 is also necessary to be adjudicated while re-appreciation of evidence available on record on the background of grounds of objections raised in appeal memo. The execution of decree under appeal is going on. If the execution of decree under appeal is not stayed then the very purpose to file the appeal will frustrate as rightly pointed out by the Ld. Counsel for appellant. No

loss will cause to appellant if execution of decree is stayed till adjudication of this appeal on merit. Considering the peculiar circumstances of the case, the stay for the execution of decree is necessary in the interest of justice. Therefore, I answer point no.1 in affirmative and proceed to pass the following order.

**ORDER**

1. The application is allowed.
2. The execution of decree passed by the C.J.J.D. Mhaswad in Reg. C.S.No. 86 of 2009 is hereby stayed till disposal of this appeal.
3. Inform the Executing Court accordingly.

Vaduj.  
Date: 16.06.2023

(Rajendra V. Huddar)  
Additional Sessions Judge, Vaduj