

**Order Below Exh.6 in Reg.Civil Appeal No.71/2015**

1. By this application the appellants/orig. plaintiffs have prayed to stay the execution of judgment and decree passed by Civil Judge, Jr.Dn.Dahiwadi in R.C.S.No.101/2006 ( Old No.192/1997) by alleging that one Laxman Govind Mane is her paternal uncle. He has filed R.C.S.No.101/2006 against her brother Vitthal, his brother Ramchandra and other family members for partition and separate possession in respect of landed property situated at village Waki, Tal.Man. In the said civil suit Laxman has not joined them as necessary party as they are real sisters of Vitthal. The above suit came to be decreed in favour of Laxman on 30-3-2011. According to the appellants they have filed R.C.S.No.183/2011 against Laxman , their brother Vitthal and other family members in the court of C.J.Jr.Dn.Dahiwadi for partition and separate possession of their share by alleging that decree passed in R.C.S. No.101/2006 is not binding upon them and for allotting their share in the suit property by effecting partition. Laxman the respondent No.1 on the basis of decree passed in R.C.S.No.101/2006 filed execution Petition No.17/2011 before the Learned Court and the Learned Lower Court forwarded decree to Collector,Satara for effecting partition and the Collector is going to effect partition of the suit properties on the basis of decree passed in R.C.S.No. 101/2006. According to appellants the Lower Court dismissed their suit No.183/2011 and therefore they have preferred this appeal. In fact they were not party in R.C.S.No.101/2006 and they have got share in the suit property, but the Learned Lower Court has not

taken in to consideration the above aspect. They have got hope of success in this appeal. If the decree passed in R.C.S.No.101/2006 is going to be executed, then this appeal will become infructuous. Hence, the above decree be stayed till the decision of this appeal.

02. The respondent No.1 resisted this application by filing say at Exh.23 and contended that the suit filed by the appellants itself was not tenable as in R.C.S.No.101/2006 filed by him against the respondents No.3 to 8. The respondent No.3 Vitthal was defendant No.1 in the said civil suit and at that time he was acting as joint family manager of plaintiffs and therefore respondent No.3 Vitthal represented the share of present appellants in the said civil suit and whatever share was decided in favour of respondent No.3 Vitthal in the said civil suit is not exclusively his share, but the present applicants have got share in the said share. Therefore, it was duty of present appellants to file suit against their brother Vitthal have getting their share. The present appellant has also challenged decree passed in R.C.S.No.101/2006 in R.C.S.No. 183/2011 filed by them by alleging that the decree is not binding upon them as they were not party in the said civil suit No.101/2006. However the Learned Lower Court framed issues to that effect and recorded his finding that the decree passed in R.C.S. No.101/2006 is binding upon the present appellants as Vitthal the brother of appellants were representing as their joint family manager of branch of Bajirao, who was father of present appellants. In R.C.S.No.101/2006 the Civil Court has also framed issues and recorded negative finding on it. The appellants at the

instance of respondent No.3 has filed above suit as well as the present appeal, just to prolong the delivery of possession of the suit property to the present respondent No.1 by effecting partition and hence, application be rejected.

03. I heard both sides at length, perused the judgment and decree passed in R.C.S.No.101/2006 and 183/2011 passed by Civil Judge Jr.Dn.Dahiwadi. After perusal of judgment and decree passed in R.C.S.No.101/2006 it is clear that the respondent No.3 Vitthal was representing as joint family manager of present appellants as the present appellants and respondent No.3 Vitthal are the legal heirs of deceased Bajirao and above suit was filed by Laxman the uncle of respondent No.3 Vitthal. Considering the genealogy given in R.C.S.No.183/2011 by the present appellants it is clear that the respondent No.3 Vitthal was representing as joint family manager of present appellants. The Civil Court,Dahiwadi has also observed in R.C.S.No.101/2006 that the present appellants were neither necessary party nor proper party as their share was represented by respondent No.3 Vitthal. Considering the above discussion, I am of the opinion that the present appellants have no any right to stay the execution of judgment and decree passed in R.C.S.No.101/2006. If they wants their share, then they can file suit against their brother Vitthal i.e. respondent No.3.Hence, I proceed to pass the following order.

**ORDER**

Application shall stands rejected.

Date :6.04.2018.

(P.Y.Kale )  
Extra Jt.District Judge, Vaduj.