

Order Below Exh. 05 in Reg.Civil Appeal. 53/2024

Sampat Ingale etc.

Vs.

Kisan Ingale etc.

1. After going through the contents in the application and say filed by the respondent, following points arise for my determination. I have recorded my findings thereon with reasons thereto as follows:

Sr.No	Points	Findings
1.	Whether stay to the execution of : judgment and decree under appeal is necessary till final disposal of this appeal ?	
2.	What order ?	: As per final order.

REASONS

As to Point no.1 & 2:

2. Being aggrieved by the judgment and decree passed by C.J.J.D. Dahiwadi in Reg.C.S.No. 105 of 2007 the appellants who are original defendants have preferred this appeal. They have filed application under consideration to stay the execution of decree under appeal. The respondents i.e. original plaintiffs have strongly objected

the application by way of their say at Exh.35, 39, 40 respectively. The Ld. Counsel for the appellant submitted his arguments which is *mutantis mutandis* to the grounds of objection raised in appeal memo and contents in application. The respondents while resisting the application are supporting the judgment and decree under appeal. The line of submissions of the Ld. Counsel for the respondents is in accordance with their say.

3. I have gone through the judgment under appeal on the background of the submissions. The suit claim for partition and separate possession in respect of the suit property was filed in the Ld. Trial Court. The Ld. Trial Court decreed the suit claim and has given direction to send precept in accordance with the Section 54 of the C.P.C. towards the Collector for partition by metes and bounds. The averments in plaint, evidence which has come on record *prima facie* goes to show that it is second round of litigation in respect of partition going on between the parties. In earlier suit for partition, the property in question was not inserted. The defendants have come with the specific case that the suit claim in present form is not maintainable at all. They have also come with the case that the suit property was self-acquired property. Whether the decree under appeal is legal and proper has to be determined after adjudication of the case put forth by the appellant in this Court on the background of the grounds of objection raised in appeal memo. It will be just and proper to stay the execution of decree under appeal to the extent of delivery of possession as the decree under appeal is in respect of partition of agriculture land. Therefore, I answer point partly in the affirmative and proceed to pass the following order.

ORDER

1. Application is partly allowed.
2. The execution of judgment and decree under appeal to the extent of delivery of respective portion to respective parties in accordance with the partition chart approved by competent authority is hereby stayed till final disposal of this appeal.
3. Needless to say that the competent authority is not precluded to continue the proceeding in respect of partition of suit property till the stage of delivery of possession.
4. Both parties to take note of this order.
5. Inform the ld. Trial Court as well as competent authority accordingly.

Vaduj.
Dt. 23.04.2025

(Rajendra V. Huddar)
District Judge-1, Vaduj.