

In the Court of District Judge-3, Wardha.

RCA No. 14/2019
CNR No.MHWR010002772019

Ghanshyam .Vs. Rajashri

Order Below Exh.12
 (passed on 15.02.2020)

1. Perused the application. The respondent no.1 filed her reply on the application itself and submitted that she had filed suit for declaration, permanent and mandatory injunction against the appellant and respondent no.2. She never asked for possession in the original suit. There is no provision in the Code of Civil Procedure for execution of decree for declaration and injunction. The application is misconceived and filed in collusion with respondent no.2. Hence, the application be rejected with compensatory costs. The respondent no.2 has given no objection to grant stay.

2. Following points arise to determine this application and I record my findings against it with reasons as under -

<u>S.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the appellant is entitled to relief as sought in this application?	<u>In affirmative.</u>
2.	What order?	<u>Application is allowed.</u>

REASONS

As to points no. 1 and 2 :-

3. Perused written notes of argument of appellant filed at Exh.14.

Perused case record. It appears that the respondent no.1 had filed RCS No.271/2012 for declaration and injunction and said suit is decreed vide judgment and decree dated 26.09.2017. The respondent no.1 is declared as owner of the suit property and the appellant and respondent no.2 are restrained from obstructing her possession over suit property. The said judgment and decree is under challenged in this appeal. However, on perusal of documents filed by appellant under list dated 18.06.2019, it appears that on the application of the respondent no.1, revenue proceeding was initiated before the Tahsildar, Deoli for delivery of possession of suit property from the appellant to the respondent no.1. Moreover, in RCA No.52/2018 filed by respondent no.2 against the respondent no.1 and appellant, the District Court Wardha has directed to maintain status quo. In this circumstances, I am of the view that it is necessary to stay the execution of judgment and decree dated 26.09.2017 passed in RCS No.271/2012. I am satisfied that the appellant is entitled to relief as sought in this application. Therefore, my answer to point no.1 is in affirmative. Therefore, application deserves to be allowed. Hence, I proceed to pass following order :-

Order

- (1) Application is allowed.
- (2) The execution and operation of judgment and decree passed in RCS No.271/2012 dated 26.09.2017 is hereby stayed till final disposal of this appeal.
- (3) Costs in main cause.

Wardha
Dt. 15.02.2020

(R.N.Barad)
District Judge-3, Wardha.

CERTIFICATE

I affirm that the contents of this PDF file judgment are same word to word, as per the original judgment.

Name of Stenographer : A.N. Nakhate,Steno.(G-1)

Name of Court : District Judge-3, Wardha