

IN THE COURT OF ADHOC DISTRICT JUDGE-1, WARDHA.

Regular Civil Appeal No.72/2018
CNR:MHWR010009242018

Smt. Anjanabai Wd/o Gendlal Gujar
and others

**.. Appellants/Ori. Defendants
No.1 to 3**

..V/s..

Sau.Jayashree W/o Vilas Bhati
and others

**.. Respondents/
Ori. Plaintiffs No.1 & 2**

Order below Exh.5

(Passed on 20th December, 2021)

1] Read the application and say. Heard S.A. Sikka Advocate for the appellants. Heard Advocate Smt. R.V. Hiware for respondent No.1 and Advocate Smt. S.A. Purekar for respondent No.8. Perused the record.

2] Present application is filed by the appellants for grant of stay to the operative effect of judgment and decree dated 21.04.2018.

3] It is averred by the appellants that they have preferred appeal before this Court against the judgment and decree dated 21.04.2018 passed by 2nd Joint Civil Judge, Junior Division, Wardha in Regular Civil Suit No.117/2011 (Sau.Jayashree+1 .V/s. Smt.Anjanabai and others) thereby partly decreeing the suit with costs and declaring that the plaintiffs have 1/4th share in the suit property and declaring the partition deed dated 17.01.2007 as void.

4] It is averred by the appellants that the learned Trial

Court has not appreciated the evidence on record in its proper perspective and arrived at erroneous conclusion in partly decreeing the suit. The judgment and decree, therefore, suffers from grave illegality, which has resulted in to miscarriage of justice. They have raised strong and substantial grounds of law and fact in appeal and they are hopeful to succeed in it. They prayed to grant stay to the operative effect of judgment and decree pending the decision on appeal.

5] Respondent No.1 filed reply to the stay application and strongly objected application stating that learned Trial Court has not appreciated evidence on record in its proper prospective and arrived at erroneous conclusion in partly decreeing the suit. It is averred that the respondents No.1 and 2 being legal heirs of deceased Jagat S/o Babulal Gujar are inherited and entitled for partition and separate possession. As such, they are having legal rights to execute decree passed by the Court. Respondent No.1 prayed to reject this application.

6] Considering the pleading of the both sides, upon hearing advocates, following points arise for my consideration. I have recorded my findings there on with reasons to follows.

Sr. No.	Points	Findings
1]	Whether the appellants have made out sufficient ground to stay the judgment and decree dated 21.04.2018 in Regular Civil Suit No.117/2011 ?	In Affirmative.
2]	What Order ?	: Application allowed.

: REASONS :**AS TO POINT NO.1:**

7] It is submitted by Shri Sikka, Advocate for the appellants that learned Trial Court has not properly considered evidence on record and partly decreed the suit with costs. Respondents filed execution proceeding. As appeal is filed against judgment and decree, appellants are having every hope of succeeding in appeal. He prayed to consider above aspect and allow the present application.

8] On the other hand, Advocate appearing on behalf of respondent No.1 admitted that respondents have filed execution proceeding. She has prayed to pass necessary order.

9] I have gone through judgment passed by learned Trial Court and noticed that learned Trial Court has held that plaintiff proved that she has 1/4th share in suit property. Learned Trial Court held that construction of the suit property is illegal and not binding upon plaintiff.

10] Definitely, some time will take to decide present appeal after hearing both sides Advocates. Advocate of the respondent No.1 has not disputed that plaintiff has filed execution proceeding. When inquired with Advocate for respondent No.1 about execution proceeding, she fairly stated that though she has filed execution proceeding, she is not going to take immediate action for possession. She has fairly stated that she has not having objection for staying operative effect of judgment and decree dated 21.04.2018. If respondents take coercive action in execution proceeding then definitely purpose of filing appeal will frustrate.

11] Considering above aspect, present application deserves to be allowed. Thus the Court answered the Point No.1 in affirmative. Hence, the Court pass following order.

ORDER

- i] The application is allowed.
- ii] The operative effect of judgment and decree passed by learned 2nd Joint Civil Judge, Junior Division, Wardha in Regular Civil Suit No.117/2011 (Jayshree Bhati +1 .V/s. Anjanabai Gujar and others) decided on 21.04.2018 is stayed till decision of present appeal.
- iii] Costs in cause.

Wardha.
Dated: 20.12.2021.

(Smt. R.J. Rai)
Adhoc District Judge-1,
Wardha.

CERTIFICATE

I affirm that the contents of this P.D.F. file are same word to word as per the original order.

Name of Stenographer	:	M.A. Chaudhari
Court Name	:	In the Court of the Adhoc Dis Judge-1, Wardha.
Date	:	20.12.2021
Order signed by Presiding Officer on	:	20.12.2021
Order Uploaded on	:	20.12.2021

