

ORDER BELOW Exh.4 in
R.C.A.No.128/2024
CNR-MHWR01-001808-2024

1. Perused application and say. Heard Advocate of appellant and respondents no.1 and 4 to 7. Respondents no.2 and 3 failed to appear though duly served so matter proceeded ex-parte against them.
2. This is an application filed under Order 41 Rule 5 of Civil Procedure Code, 1908, for grant of stay to operation of judgment and decree dated 26/09/2024 passed in Regular Civil Suit No.30/2016 (Nani Khangar Vs. Arvind + 6).
3. According to appellant (original defendant no.1), he has preferred appeal against judgment and decree by which suit is decreed. It is declared that plaintiff is entitled for share $\frac{1}{2}$ share in the suit property and she is also entitled for $\frac{1}{8}$ share in her mother namely Gangabai's property i.e. $\frac{1}{2} + \frac{1}{8} = \frac{5}{8}$ total share in the suit property. Defendant no.2 and 3 are entitled for $\frac{1}{8}$ share each in the half share of deceased Gangabai's property and defendant no.4 to 7 are entitled for $\frac{1}{8}$ share collectively in the same. According to appellant though original plaintiff averred that suit property came to her share and share of her mother Smt. Gangabai by way of partition, she has suppressed material fact that her mother was owner of said property and she had executed registered gift-deed dtd.2-5-2008 about suit property in favour of appellant i.e. original defendant no.1 who is her grandson. Smt. Gangabai was owner and possessor of suit property and she can transfer her share by way of registered gift-deed. Moreover suit is barred by limitation and Ld. Trial court gave incorrect

findings to the issues raised. According to appellant he has raised various legal and factual aspects in appeal. If as per decree Collector proceeded to effect partition, purpose of appeal will be frustrated. There are chances of success. If execution of decree is not stayed, he will suffer irreparable loss. Therefore present application is filed.

4. Respondent no.1 (original plaintiff) filed say at Exh.29 and denied the contentions in the application. Ld. Trial court after hearing both parties decreed suit and it is declared that alleged gift-deed executed by Smt. Gangabai in favour of appellant is void and it is not binding on respondent. According to respondent no.1 Smt. Gangabai has no right to execute alleged gift-deed and as it is not proved suit is decreed. Suit property is in possession of legal heirs of Haridas Butle so respondent no.1 prayed to reject application.

5. Respondents no.4 to 7 (original defendants no.4 to 7) filed pursis at Exh.35 and adopted reply filed by respondent no.1.

6. Suit is filed for declaration, partition and possession of separate share in suit property. Relationship between original plaintiff and defendants is not disputed. According to plaintiff suit bearing no. RCS No.141/21 about declaration of Civil Death of Haridas is decreed and defendants no.4 to 7 are legal heirs of Haridas. After registered partition between Haridas, defendant no.2 Rambhau, defendant no.3 Ramesh, mother Gangabai and plaintiff, suit property bearing Gat no.424 area 2.45 H.R. at mouza Chinchala was given to share of plaintiff and her mother Gangabai so after death of Gangabai, plaintiff and her son have share in suit property. According to appellant i.e. defendant no.1 Smt. Gangabai i.e. his grandmother was absolute

owner and possessor of suit property on the basis of partition. Plaintiff had relinquished her share in suit property in favour of Gangabai. Smt. Gangabai had executed registered gift-deed in favour of defendant no.1.

7. Ld. Trial court held that original plaintiff is having share in suit property and alleged gift-deed in favour of defendant no.1 is not proved. In appeal appellant i.e. original defendant no.1 has raised grounds that despite of knowledge original plaintiff has not challenged gift-deed, Ld. Trial court has not framed issue regarding invalidity of gift-deed, issue of limitation is also wrongly concluded. It is also contended that even if it is assumed that Gangabai was not competent to gift property in its entirety, she was competent to transfer her share and to that extent gift was proper. All these facts and legal provisions are not considered by Ld. Trial court.

8. Advocate of appellant filed copy of notice of Naib Tahsildar Deoli dtd.1-1-2025 and it is contention of appellant that if Tahsildar initiated further procedure for execution of decree, he will suffer irreparable loss. Advocate of respondent no.1 submitted that Tahsildar will proceed with other procedural aspects which requires time. Hence he submitted that in case of stay, only delivery of possession is to be stayed. However in appeal various legal and factual aspects are raised by appellant. Appeal is continuation of suit and legal points raised are to be decided on merit. At this stage if matter proceeded further on the basis of notice received from Tahsildar, appellant will suffer irreparable loss. If execution of decree is not stayed, the purpose of appeal will be frustrated. Considering nature of suit, decree, in the interest of justice it is proper to allow the stay application. Hence,

following order is passed.

- ORDER -

- 1] Application Exh.4 is allowed.
- 2] Execution of decree passed by the learned Jt. Civil Judge, Junior Division, Wardha in Regular Civil Suit No.30/2016 (Nani @ Shakuntala Khangar Vs. Arvind Butle + 6) dated 26.09.2024 is stayed till the final hearing and disposal of the appeal.
- 3] Parties to co-operate in early hearing of appeal.
- 4] Inform to Ld. Trial Court.

Dt. 29.03.2025

(Smt. R.V. Adone)
District Judge-3, Wardha.

Certificate

“ I affirm that the contents of the P.D.F. File order are same word for word as per original order.

[S.V. Dakhane]
(Stenographer G-1)