

IN THE COURT OF DISTRICT JUDGE-1, KELAPUR
(Presided over by P. B. Naikwad)

REGULAR CIVIL APPEAL NO.17/2018
(CNR No.: MHYA080000522018)

APPELLANT : 1) Mahadev Karnuji Tajne,
Aged about 55 Years, Occu-
service and Agriculturist, R/o Narsala
Tq. Maregaon, Dist. Yavatmal

- V E R S U S -

RESPONDENT : Haridas Shankarao Khade
Aged about 37 Years, Occu-
Agriculturist R/o Narsala Tq.
Maregaon, Dist. Yavatmal

O R D E R Below Exh.5
(Passed on 23rd June 2021)

1] Perused the application and the say filed by respondent vide Exh.10. Heard both learned counsels.

2] Appellant/applicant has filed the present application for staying the execution and operation of the judgment and decree passed by learned Civil Judge (Jr.Dn.), Maregaon, in R.C.S. No. 24/2013 dated 27-04-2018.

3] Learned counsel for appellant submitted that, suit for removal of encroachment and possession, was filed by plaintiff and the same has been decreed by learned trial court and defendant has been directed to handover possession of the encroach portion of 0.11R to plaintiff within a month from the date of order . Accordingly,

plaintiff has filed execution petition. Appellant is having good case, therefore, it is necessary to stay the execution and operation of the decree, till decision of the present appeal. If the execution and operation of decree is not stayed, then irreparable loss and injury will be caused to the appellant and the appeal will become infructuous, because he will lost his possession of the suit property. Therefore, application be allowed.

4] Respondent by his say opposed the said application and prayed to rejected the application. Learned counsel for respondent also argued that, there is no case to appellant. The Judgment and Decree passed by trial court is legal and proper. Hence application be rejected.

5] Having regard to the submissions made by both learned counsel and after going through the material available on record, I found that, plaintiff had filed suit for removal of encroachment and possession, and accordingly learned trial court decreed the same and thereby directed defendant to deliver possession of the encroach portion to plaintiff within one month from the date of judgment.

6] Therefore, considering the nature of dispute between the parties and as question of possession is involved, therefore as being first appeal, it is necessary to stay the execution and operation of the decree in respect of possession. If stay is not granted, then certainly appellant/original defendant will suffer irreparable loss and injury and the appeal will also become infructuous, as he will lost his valuable right to challenge the impugned order and decree. Therefore, application needs to be allowed on certain conditions. Hence, I pass

the following order.

ORDER

- 1) Applications Exh.5 is allowed .
- 2) The execution and operation of decree passed by Civil Judge (Jr. Div.)Maregaon in R.C.S. No. 24/13 dated 27-04-2018, in respect of possession of property described in plaint para No.1 is hereby stayed, till decision of present appeal on following conditions.
 - a] Appellant shall not create any third party interest in the suit property and shall not transfer or handover possession of the same to any other person.
- 3) Paper-Book be expedited.
- 4) Inform the trial court accordingly.

Dated : 23-06-2021.

(P. B. Naikwad)
District Judge-1, Kelapur.