

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

REGULAR CIVIL APPEAL NO.17/2019
(CNR No.: MHYA080001652019)

APPELLANT : Sanjay Laxman Bodhe,

- V E R S U S -

RESPONDENTS : Laxman Gularam Bodhe and Others.

O R D E R Below Exh.2
(Passed on 11th March, 2020)

1] Perused the application and the say filed by respondents.
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 Civil Judge (Jr.Dn.), Maregaon, in Regular Civil Suit No.24/2011, dated 28-02-2019.

3] Learned counsel for appellant submitted that, suit for partition and separate possession was filed by plaintiff/appellant and the same has been dismissed by learned trial court. However the trial court has allowed the counter claim filed by defendants 2-A to 2-C and directed plaintiff to deliver possession of the suit property within three months. As appellant/plaintiff has preferred appeal against the said judgment and decree and as he is having hope of success, therefore if decree is executed, the appeal become infructuous and

appellant will lost his valuable right to contest the appeal. Therefore, it is necessary to stay the execution and operation of decree till decision of present appeal. Therefore, the application be allowed.

4] Respondents by their say contended that the appeal should be expediated and private paper-book shall be filed, otherwise application should not be allowed.

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 declaration that partition in respect of suit field and accordingly learned trial court dismissed the same, however learned trial court decreed the counter claim of defendants and thereby directed plaintiff to deliver possession of the field Gat No.133 to defendants No.2-A to 2-C.

6] Therefore, considering the nature of dispute between the parties, as question of possession is involved, therefore as being first appeal, it is necessary to stay the execution and operation of decree in respect of possession. If stay is not granted, then certainly appellant/original plaintiff 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 proceed to pass the following order.

ORDER

1) Applications Exh.2 is allowed .

- 2) The execution and operation of decree in respect of possession of field Gat No.133, passed in R.C.S.No.24/2011, dated 28-02-2019 is hereby stayed, till decision of present appeal.
- 3) During the pendency of the appeal, the appellant shall not dispose off the field Gat No.133, in respect of which decree is passed or shall not create any third party interest in it. He shall furnish surety to that effect to the tune of Rs.1,00,000/-.
- 4) Appellant/plaintiff to supply private Paper-Book within six months from the date of this order.
- 5) After submissions of Paper-Book, appeal be expedited.
- 6) Inform the trial court accordingly.

Dated : 11-03-2020.

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