



ORDER PASSED BELOW EXH.7 IN REGULAR CIVIL APPEAL NO.
20/2020
(C.N.R. - MHAH07 - 000344 - 2020)
(Anil Madhukar Mandlik Vs. Shaikh Anwarbi Lalbhai & Ors.)

1. Appellant/defendant has made the said application for stay of execution of decree. The said application is under Sub-rule (1) of Rule 5 of Order 41 of C.P.C for stay of the execution of the judgment and decree passed in R.C.S.No. 174/1996, whereby the Ld. Trial Court had partly decreed the plaintiff's suit for recovery of encroached land.

2. Appellant/defendant has contended that unless the execution of decree is stayed the plaintiffs/respondents would try to take the possession of the suit property.

3. The respondents have resisted the application by filing their detail say at **Exh.17**. They have denied all the averments and pleadings in the said application. They have contended that the appellant has encroached their land and therefore, he is not entitled to claim for equitable relief. They further contended that the suit has

been filed in the year 1996 and decided in the year 2020 and in the said period, the appellant is in the possession of the encroached portion of the suit property of the respondents. They have contended that the appellant does not have any chance of success in appeal and the judgment of the learned trial judge is quit correct and proper. He also contended that appellant has no merits in this appeal. Ultimately, the respondents wished to reject the said application.

4. I have heard the Ld. Advocate Shri. A.R. Rathod for the appellant and Ld. Advocate Shri. S.H. Gonge for the respondents.

5. The decree is for recovery of encroached land of the suit property. If the decree is executed then certainly, there would be create further complications. Therefore, in order to avoid further complications in the litigations, it would be just and proper to grant the stay to the execution of the decree only to the extent of delivery of possession of the suit property.

6. That apart, considering the averments in the application and the fact that the appellant is in possession of the suit property, I am satisfied that substantial loss may result to him unless order of stay of execution of decree is made. This because with execution of the decree, the appellant/defendant would be dispossessed from the suit property, which is agricultural land admittedly in his possession.

8. For the said reason, I deem fit in the interest of justice to stay the execution of the decree till the determination of this appeal. However, such stay shall only be for handing over possession of the encroached portion of the suit property in accordance with law.

9. It is further directed that the stay shall be subject to condition provided by Sub-rule (3)(c) of Rule (5) of Order 41 of C.P.C. requiring the appellant/defendant to furnish security for the due performance of such decree or order as may ultimately be binding upon him. The security shall be in the form of depositing money as per the Government valuation of the encroached portion of the suit property, to be determined from the Sub-registrar office, Akole.

In the result, following order is made :

: ORDER :

1. Application **Exh.7** is allowed, subject to condition precedent of furnishing security for compliance of decree.
2. The execution of decree made in R.C.S No. 174/1996 is stayed to the extent of handing over possession, till determination of this appeal on its merit subject to condition precedent of giving security in the form of deposit in sum of amount of money of the suit property valuation determined from the Sub-registrar office, Akole.

3. The appellant is directed to furnish the valuation of the encroached portion of the suit property determined from the Sub-registrar office, Akole within 15 days.
4. This order of stay to the execution of decree shall stand vacated upon the failure of the appellant/defendant to furnish valuation and make deposit of the aforesaid security amount within 15 days thereafter.
5. Accordingly, the application is disposed-of.

Date - 10/01/2022.

(**D.S. Ghumare**)
District Judge - 1,
Sangamner.