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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CIVIL APPLICATION NO. 1960/2022 IN AO/5/2022

**RAJARAM GANGADHAR LONDE AND ANOTHER
VERSUS
AJMODDIN A. REHMAN (DIED) THR LRS HARUN AJIMODDIN
SHAIKH AND ORS**

Mr. Kishor J. Ghute Patil, Advocate for the
applicants

CORAM : VINAY JOSHI, J.

DATE : 15-02-2022

P. C.

. The applicants are seeking stay to the further proceeding of Regular Civil Appeal No. 192 of 2016 till pendency of this appeal from order.

2. With the assistance of the learned counsel I have gone through the judgment passed by the trial court in Regular Civil Suit No. 199 of 2009 as well as judgment of the first appellate court in Regular Civil Appeal No. 192 of 2016.

3. The applicants are original plaintiffs who have filed the suit for removal of encroachment and

for possession. After recording evidence, the trial court was pleased to decree the suit directing the defendant No.1 to hand over the possession of the encroached area as well as directed to carryout the enquiry to determine mesne profit.

4. Being aggrieved by the said judgment and order the original defendants have filed first appeal primly raising ground that while carrying out measurement, notices were not served on them. Besides that it reveals that the defendant contended that the measurement carried out by court Commissioner was faulty since the area of encroached has not been measured properly.

5. Upon considering the submission the first appellate court thought it fit that it is necessary to have fresh enquiry in respect of encroachment, measurement and therefore by exercising power under Order 41 Rule 23-A of the Code of Criminal Procedure has remanded the matter for re-measurement and fresh adjudication on merits.

6. The learned counsel appearing for the applicants/plaintiffs has pointed out that in the

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trial court evidence was led by the witness stating that notices were issued by RPAD, which were served. Particularly he took me through para 14 of the impugned judgment wherein the first appellate court has mentioned that at the time of measurement defendant No.1 was present as well as had signed the panchanama.

7. Having regard to the said fact there are arguable points on merits in the appeal from order. In view of that further proceeding of RCA No. 192 of 2015 stands stayed till next date.

8. Stand over to 15-03-2022.

[VINAY JOSHI, J.]

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