

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.11290 OF 2015

Bhaskar Asaram Jagtap
Age 71 years, Occu. Agri.,
R/o Kapurwadi,
District Ahmednagar

.. Petitioner

Versus

1. Shantaram Asaram Jagtap,
Age 65 years, Occu. Agri. &
Pensioner, R/o Kapurwadi,
District Ahmednagar,
at present R/o Om Niwas,
Tupe Vasti, Jagtap galli,
Urali Kanchan, Taluka Haveli,
District Pune

2. Bijlabai Bhausahab Shelke,
Age 73 years, Occu. Household,
R/o Kharekarjune, Taluka and
District Ahmednagar

.. Respondents

Mr L.B. Palod, Advocate for petitioner

Mr V.D. Hon, Senior Counsel i/b Mr A.V. Hon, Advocate for respondent
No.1

CORAM : N.W. SAMBRE, J.

DATE : 30th November 2015

PER COURT

Heard.

2. Regular Civil Suit No.404 of 2011 for partition came to be decreed on 4th February 2015 against which Regular Civil Appeal No.101 of 2015 came to be moved and same is pending on the file of Ad hoc District Judge, Ahmednagar. In the said appeal, an application Exh.7, seeking stay to the judgment delivered by the learned trial Court decreeing the suit came to be rejected by order dated 4th September 2015, as such present petition.

3. Learned Counsel for the petitioner would urge that the Court below has committed an error of law by not protecting the present petitioner, particularly the possession thereof, as according to him, the appeal is a continuation of suit and any order passed in the appeal is subject to further adjudication under the provisions of Section 100 of Code of Civil Procedure. He would then urge that the stay in the matter of giving effect to a preliminary decree can go on, however, the possession needs to be protected.

4. Mr Hon, learned Senior Counsel for the respondent No.1 - decree holder would urge that the petitioner is raising objection on every stage of giving effect to preliminary decree. According to him, let all the issues/stages can go on by giving effect to the preliminary decree. According to him hearing of appeal can be expedited.

5. In that view, it will be appropriate that giving effect to preliminary decree be go on and there shall be stay to the possession.

6. In view of above observations petition stands disposed of. The injunction as against the petitioner clamped shall continue to hold field till hearing of appeal.

(N.W. SAMBRE, J.)