

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.13375 OF 2015**

Ajitsinh Dattajirao Ghatge

..Petitioner

Vs.

Dr. Sou Nirmala Jaywant Patil & Ors.

..Respondents

Mr. M. A. Patil for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 14th SEPTEMBER, 2015

P.C.

1 The order dated 18-3-2015 passed by the Learned Ad-hoc District Judge-3, Kolhapur, rejecting the application Exhibit 6 filed for stay pending the Appeal by the Petitioner is taken exception to by way of the above Petition.

2 The Appeal in question has been filed against the decree dated 31-1-2014 passed in Regular Civil Suit No.18 of 2012 (old Special Civil Suit No.482 of 1994). By the said decree, the Plaintiff is held entitled to 1/7th share in the suit property. The Suit in question was filed for partition and separate possession as also for injunction and declaration. The Petitioner is the Defendant No.8 to the Suit in question. The application for stay Exhibit 6 has been rejected by the Lower Appellate Court on the ground that since the decree is one for partition, it is only a preliminary decree and that no prejudice would be caused to the Defendants if the stay of the decree is not granted, as execution of the decree would take its own time.

3 In my view, considering the fact that the decree is one for partition, the said decree as the Lower Appellate Court has rightly stated is a preliminary decree, the possession can be granted to the parties only upon the final decree being passed, that may take its own time. It is therefore not necessary to interdict with the impugned order. However, by clarifying that all further actions would be subject to the result of the Appeal, the above Petition is disposed of.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order