

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1628 OF 2014**

Mahadu Shankar Bhalerao & Ors.	..Petitioners
Vs.	
Chandrakant Laxman Naikodi & Ors	..Respondents

Ms Leena Patil for the Petitioners
Mr. Mangesh Joshi for the Respondent Nos.1 to 7

CORAM : R. M. SAVANT, J.
DATE : 14th JANUARY, 2015

P.C.

1 The Order dated 8-1-2014 passed by the Learned District Judge-19 and Assistant Sessions Judge, Pune, rejecting the application for stay being applications Exhibits 5 and 20 is taken exception to by way of the above Petition.

2 The Petitioners herein are the original Appellants in Civil Appeal No.224 of 2013, which has been filed by them challenging the decree of partition dated 18-1-2013. The Petitioners / Appellants are the purchasers of undivided share out of the joint family property which belongs to the Plaintiff and the Defendant Nos.4 to 5. The said decree for partition has been put into execution by the decree holders. The Petitioners as indicated above have filed the Appeal being Civil Appeal No.224 of 2013, challenging the said decree. It is in the said Appeal that the instant applications for stay came to be filed by the Appellants thereby seeking stay of the decree in view of the Appeal filed by

them. The said stay was sought on the basis that the decree could not be executed as it is in violation of the provisions of the Rehabilitation Act. The Lower Appellate Court considered the said applications and having regard to the fact that the Petitioners/Appellants are the purchasers of undivided share, held that they are not entitled for execution of the decree for partition as it is for them to file a separate Suit for partition of the share that they have purchased.

3 In so far as the provisions of the Rehabilitation Act are concerned, the Lower Appellate Court observed that the provisions of the said are equally applicable to the Appellants meaning thereby the Appellants could not have purchased the undivided share without the permission of the Competent Authority. The Lower Appellate Court held that other contentions as regards the tenancy etc., are not required to be considered at the said stage as they can be considered in the main Appeal. The Lower Appellate Court has accordingly rejected the applications Exhibits 5 and 20 filed by the Appellants for injunction.

4 In my view, having regard to the reasons mentioned in the impugned order, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]