

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.265/2011

Gayabai Madhav Pawar and others

..Versus..

Laxmibai w/o Gopala Gadhe and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 28.9.2015

Heard Shri P.S. Sadavarte, advocate for the appellants, Shri H.S. Chitale advocate h/f Shri A.A. Naik advocate for respondents 1 and 2 and Shri Rohit Joshi, advocate for respondents 8 to 11.

The appeal is **admitted** on the following substantial question of law :

(i) *Whether the learned District Judge is right in reversing the findings recorded by the trial Court on the point of legal necessity and holding that the transaction between the original defendant no.1 - Mahadu and Laxmibai is not binding on the plaintiffs in Regular Civil Suit No.69/2001 ?*

As the civil suit filed by the appellants praying for partition and separate possession has been dismissed ,prima facie, I find that the appellants are not entitled for interim order as prayed for in the memorandum of appeal. The prayer for interim order is rejected accordingly.

Shri H.S. Chitale advocate waives notice for respondents 1

and 2.

Shri Rohit Joshi, advocate waives notice for respondents 8 to 11.

The appellant shall file private paper book within six months.

C.A.S. NO.474/2011

Heard.

The appellants are seeking stay to the effect, operation and execution of the judgment and decree passed in Regular Civil Appeal No.5/2005 and Regular Civil Appeal No.6/2005 by the common judgment dated 18th February, 2011. The appellants have prayed that the respondents 1 to 3 be restrained from getting registered the sale deed of the suit field, during the pendency of the appeal. The subject matter of the present appeal is the judgment and decree passed in Regular Civil Appeal No.5/2005 which had arisen out of the judgment and decree passed in Regular Civil Suit No.69/2001 in which appellants/plaintiffs prayed for decree for partition and separate possession of the suit field and for declaration that the transaction between the defendants *inter se* is not binding on the plaintiffs. The prayer as made in the civil application is not connected with the subject matter of challenge in the second appeal, therefore, the civil application is rejected with liberty to the appellants to move this application in appropriate proceedings.

JUDGE