

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

CIVIL APPLICATION (CAS) NO.408 OF 2016
IN
SECOND APPEAL NO.128 OF 2010

Mohan Vyankatrao Puranik (Dead) Thr. Legal heirs Vidya Mohan Puranik and ors.

-vs-

Sk. Ismail Mohd. Yakub Saudagar and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri K. S. Narwade, Advocate for appellants/applicants.
Shri Abhay Sambre, Advocate for respondent Nos.1 and 10.

CORAM : A.S.CHANDURKAR, J.
DATE : May 03, 2016

Prayer is to grant stay to the execution of the decree passed by the Appellate court in R.C.A. No.133 of 2003. By the said decree, the appellant along with original defendant Nos.2 to 9 have been directed to execute the sale deed of the suit field in favour of the defendant. It is submitted that considering the substantial question of law which has been framed, it would be necessary to stay that part of decree by which the sale deed is to be executed in favour of defendant No.1.

The application is opposed by the learned counsel appearing for respondent No.1-defendant No.1 by filing reply. It is submitted that the appellant was claiming entitlement on the basis of a Will dated 05/09/1990. However Second Appeal No.129 of 2010 filed by the present appellant challenging non-acceptance of said Will has been dismissed. It is further submitted that the defendant No.1 is in possession of the suit property.

Considering the substantial question of law as framed coupled with the fact that the defendant No.1 is already in possession of the suit property, it would be necessary to stay the direction issued to the appellant to execute the sale deed in favour of defendant No.1 as the same would result in further multiplicity of proceedings if stay is not granted. Hence during pendency of the second appeal, the execution of the decree passed against the present appellant shall remain stayed.

Civil application is disposed of.

JUDGE