

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

CIVIL APPLICATION NO.22/2016 IN SECOND APPEAL NO.2/2016

Prashant Panjabrao Shinde & anr..vs.Smt. Kamlabai Tukaramji Wankhede

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

Court's or Judge's orders.

Ms Komal Munde, Advocate h/f Mr. Anjan De, Advocate
for applicants.

Mr. R. A. Mirza, Advocate for respondent.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 28, 2017

This is an application under Order XLI Rule 5 read with Order XLII read with Section 151 of the Code of Civil Procedure. In other words, the present application is for grant of stay.

Heard Ms Komal Munde, Advocate for the applicants and Mr. R. A. Mirza, Advocate for non applicant.

Though, both the courts concurrently recorded a finding that the respondent-original plaintiff is entitled for possession of the agricultural field on 29.04.2016, after hearing both the learned counsel, the appeal is admitted by formulating substantial questions of law as disclosed in the order. The Court also protected the possession of the applicants. The application under consideration for stay was kept for further consideration. Today, the application is taken up for confirmation of the interim order granted in favour of the applicants on 29.04.2016.

After hearing both the learned counsel, it is clear that the applicants have prima facie pointed out that they are in possession of the suit field. The question as to whether the applicants can claim adverse possession or not is the issue of final hearing. Therefore, at this stage, the Court is not expressing any opinion on it. The fact remains that the applicants are in possession.

Since the appeal is already admitted and the applicants are in possession, the present application is allowed. There shall be stay as prayed for in prayer clause (i) of the application.

The application is disposed of accordingly.

At this stage, Mr. Mirza, learned counsel for the respondent submits that looking to the age of the respondent who is aged about 82 years, early hearing of the appeal be granted.

The prayer is not unjust. Hence, put up this matter for final hearing after Summer Vacation-2018.

The appellants to file private paper book within eight weeks from today.

JUDGE