

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 564 OF 2018
WITH
CIVIL APPLICATION NO. 752 OF 2018**

Keshav Hari Jadhav ... Appellant
Versus
Mohan Dhondur Jadhav and others ... Respondents

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Mr. Drupad Patil, Advocate for the Appellant.
Mr. Rohit Joshi, Advocate for Respondent Nos. 1 to 5.

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CORAM : A. S. CHANDURKAR, J.

DATE : 10th DECEMBER, 2018.

P. C.:

1. Heard finally with consent of the learned Counsel for the parties.

2. The appellant is the original defendant in the suit for partition and separate possession as filed by the respondents-plaintiffs. The said suit came to be decreed on 17th July, 2008 by granting half share each to the plaintiffs and defendants. The defendants being aggrieved filed appeal challenging the said decree and the Appellate Court by its judgment dated 30th December, 2013 partly allowed the appeal and remanded the suit for fresh consideration to the trial Court after directing the plaintiff to include some additional properties for being partitioned. This order was challenged in Appeal From Order no.

52 of 2015, but that challenge was not accepted. After remand, the trial Court recorded a finding that the subsequently added properties were not liable to be partitioned. Against that decree, the original defendants filed an appeal before the Appellate Court. By the impugned order the Appellate Court has refused to grant stay to the execution of the decree for partition and separate possession. Hence, this appeal.

3. The learned Counsel for the appellant submitted that the Appellate Court proceeded on the wrong premise that the decree as passed in the first round of litigation was already executed. He submitted that, in fact, the executing Court had issued notice to the appellant herein for executing that decree and handing over possession. He states that even today the appellant is in possession of the suit properties. It is thus submitted that as the decree for partition is under challenge, its execution deserves to be stayed.

4. The learned Counsel for the respondent Nos. 1 to 5 on the other hand supported the impugned judgment. According to him, before the Appellate Court the only decree that is under challenge is the decree passed after the initial order of remand. The findings recorded in the earlier round by the trial Court have not been challenged in the said appeal. He, however, does not dispute the fact that actual possession of the half share has not been received by the original plaintiff.

5. On hearing the learned Counsel for the parties and on perusing the impugned order it can be seen that a substantive

appeal challenging the decree for partition is pending before the Appellate Court. This Court on 5th September, 2018 had passed an interim order staying the decree for partition only to the extent of delivery of possession. Admittedly, the decree as passed is still not executed.

6. Considering the fact that the appeal is still pending before the Appellate Court, the interests of justice would be served by passing the following order:-

- (i) The order dated 24th August, 2018 passed below Exhibit-5 by the Appellate Court is set aside. Till R.C.A. No. 31/2018 is decided, the ad-interim arrangement in terms of order dated 5th September, 2018 shall continue to operate but without prejudice to the rights of the parties. The Appellate Court shall decide the said appeal expeditiously and by the end of June, 2019. All contentions on merits of the dispute are kept open.
- (ii) The Appeal From Order is disposed of in aforesaid terms. In view of disposal of appeal, civil application does not survive and the same is also disposed of.

(A. S. CHANDURKAR, J.)