

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4475 OF 2018

Vishwas Nathu Patil	 Petitioner
V/s.	
Sarla @ Vimal Vishwas Patil & Ors.	 Respondents

Mr. Niranjan Mogre, i/by Mr. Mankirat Singh, for the Petitioner.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH APRIL, 2018.

P.C. :

1. Heard Mr. Mogre, learned counsel for the Petitioner.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 26th October 2017, passed by the District Judge-14, Pune, below the application at “Exhibit-5” filed in Civil Appeal No.276 of 2017.
3. The application at “Exhibit-5” was filed by the Respondents, seeking stay to the execution of the ‘Judgment and Decree’ passed in Special Civil Suit No.2249 of 2011. The said Suit was filed by the present Petitioner for possession and permanent injunction. It was decreed with costs and the Respondents were directed to deliver the possession of the suit property within two months from 27th February 2017.

4. The grievance of learned counsel for the Petitioner is that, the Appellate Court has granted the stay to the execution of the 'Decree' relating to delivery of possession till the decision of the Appeal, but without imposing any conditions; especially, after holding that the Respondents are the tress-passers and in possession of the suit property; therefore, to that extent, the modification is called for.

5. However, the facts of the present case reveal that, Respondent No.1 claims herself to be the wife of the present Petitioner. Petitioner himself has admitted in the cross-examination that, Respondent No.1 was living with him as his wife. Respondent Nos.2 and 3 are the children born to Respondent No.1 from the Petitioner. As observed by the Trial Court in its Judgment, the Petitioner has admitted that they are residing in the suit premises since last 27 years and he had never raised any objection about their residence within the said period, nor he has objected to Respondent Nos.2 and 3, or, for that matter, even Respondent No.1, from using his name as their father and wife, respectively.

6. Thus, this is not a case where the Respondents are rank tress-passers, so that this Court should impose some condition of payment of certain amount from them. This is a case where the Appellate Court has rightly, after directing the Respondents to file an undertaking that in

case of dismissal of the Appeal, they will deliver possession of the suit property to the present Petitioner, granted stay to the execution of the 'Decree', as regards delivery of possession of the suit premises.

7. In view thereof, no interference is warranted in the impugned order passed by the Trial Court. Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]