

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 278/2018

(RAMESH WASUDEO HATTIMARE (DEAD) THR. LR's RAJESH RAMESH HATTIMARE & OTHERS
VERSUS ANANT YADORAO PATHARIKAR & ANOTHER)

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

Court's or Judge's orders

Shri A.S. Kilor, counsel for the appellants.
Shri K.B. Zinzarde, counsel for the respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 08, 2018.

Heard. ADMIT on the substantial question of law as framed on 19.06.2018.

Shri K.B. Zinzarde, learned counsel waives notice of hearing on behalf of the respondents.

Call for Record & Proceedings.

C.A.S. NO. 700/2018.

By this application, it is prayed that the execution of the decree as passed by the appellate Court be stayed during pendency of the appeal. By that decree, the defendants have been directed to remove the barbed wire fencing made on the common boundary of the suit fields.

The application is opposed by the learned counsel for the non-applicants on the ground that the appellate Court has decreed the suit after considering the entire evidence on record.

Prima-facie, the observations made by the trial Court in paragraph 16 of its judgment indicate that the fencing has been erected by the defendants on their side of the field which fact was admitted by the plaintiffs in the cross-examination. The aforesaid appreciation of evidence by

the trial Court has not been taken into consideration by the appellate Court while reversing the said decree.

Hence, during pendency of the appeal, the execution of the decree as passed shall remain stayed.

The applicants shall however not further change the nature of the construction already erected.

Civil application is allowed in aforesaid terms and disposed of.

JUDGE

APTE