

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] No.1482 of 2017
IN
Second Appeal No.267 of 2017
[Naresh Tarachandji Motghare Vs. Dr. Pandurang Kisan Wahane & another]

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

Court's or Judge's orders

Mr. Y. N. Thengre, Adv., for the applicant.
Mr. S. V. Bhutada, Adv., for non-applicant no.1.

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CORAM : A. S. CHANDURKAR, J.

DATE : 20th February, 2018

By this application, the defendant no.2 against whom the appellate Court has passed a decree granting a declaration that the sale-deed dated 24th March, 2005 executed by defendant no.1 in favour of defendant no.2 is void with a further direction to hand over possession of the suit property to the plaintiff is sought to be stayed. In the application, it is stated that considering the nature of decree as passed, the execution proceedings deserve to be stayed.

In the reply filed on behalf of the original plaintiff, it has been stated that on 25th April, 2008, the defendant no.2 has sold the suit property to third-parties and he is not in possession of the same after having executed that sale-deed. It is further stated that this

fact has not been stated in the application for stay. As the defendant no.2 is not in possession, the decree as passed does not deserve to be stayed.

Perused the application as well as reply.

As per the decree passed by the appellate Court, the defendant no.2 has been directed to hand over possession of the suit property to the plaintiff. However, the defendant no.2 himself has sold the suit property on 25th April, 2008 in favour of two third-parties. As the defendant no.2 is not in possession of the suit property, the question of staying that direction does not arise. Hence, the Civil Application is disposed of by observing that it is only the declaration granted by the appellate Court as regards voidness of sale-deed dated 24th March, 2005 that would remain stayed. Rest of the decree can be executed in accordance with law.

Civil Application is disposed of.

Civil Application No. 1483 of 2017 :

This application shall be considered when the appeal is heard finally.

Judge