

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO. 1064 OF 2019
IN
SECOND APPEAL NO. 444 OF 2019

Madhukar s/o Gulabrao Bondse
..vs..
Madhusudan s/o Gopalrao Sapkal and ors.

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. Deshpande, Advocate for appellant.
Shri A.V.Lokhande, Advocate for respondent nos. 1 to 3.

CORAM : VINAY JOSHI, J.
DATED : 17th DECEMBER, 2019

Heard.

This application is taken out by the appellant/original plaintiff seeking stay to the execution and implementation of impugned judgment and decree dated 30.03.2019 passed in appeal bearing R.C.A. No. 319 of 2016.

Initially appellant-Madhukar s/o Gulabrao Bondse had filed Regular Civil Suit No. 812 of 2012 for declaration of ownership by way of adverse possession and for perpetual injunction. Learned Trial Court on assessment of evidence has decreed the suit.

Being aggrieved, original defendant had filed first appeal bearing R.C.A. No. 319 of 2016 which came to be allowed in term declaratory decree as well as order of

injunction was set aside. In the wake of such position, the appellants' contentions is that, the respondent is executing the decree is unconcionable. Unless there is an order of Court, in favour of party execution petition would not lie. Learned Counsel for the respondent though admits that they filed execution but, unable to say as to what order of Court is sought to be executed. In fact, after disposal of the first appeal no executable order is survived, and in the circumstance, in any case, respondent against whom there is no existing order of Court cannot execute anything which is not in their favor.

In the circumstance, this stay application is misconceived, hence, disposed of.

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By consent the matter is fixed for final hearing at the stage of admission. Put up on 16.01.2020.

JUDGE

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