

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

WRIT PETITION (WP) NO. 318/2020

[Nemichand Laxman Dithor Vs. Vishal Nemichand Dithor]

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.A. Babrekar, Advocate for the petitioner

CORAM : M. G. GIRATKAR, J.

DATE : 16/06/2020

Heard Mr.C.A.Babrekar, learned Counsel for the petitioner. The hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

The petitioner has challenged the order passed by the District Judge, Achalpur in Regular Civil Appeal No.13 of 2019. The District Judge has granted stay to the execution of decree passed in Regular Civil Suit No.98 of 2016 by Joint Civil Judge (Jr.Dn.), Achalpur.

As per submission of learned Counsel Mr.C.A.Babrekar, the property in dispute is the self-acquired property of petitioner. The execution is filed and it is pending before the executing Court. The respondent has challenged the decree before the District Court, Achalpur. In the appeal, the District Court has observed that the contention of respondent is probable and therefore, granted stay. Hence, this petition before this

Court.

Learned Counsel Mr.Babrekar has submitted that the respondents are restrained by the decree. There is evidence on record to show that the property in dispute is self-acquired property of the petitioner. The learned Counsel has further submitted that the District Court has wrongly granted stay.

There is no dispute that all the defendants/respondents are the father and brothers of petitioner. It is the contention of the defendants before the trial Court that the property in dispute is a joint family (ancestral) property and therefore, they have interest in the said property. It is their contention that, being the karta of the family, the property was purchased in the name of petitioner. The petitioner, taking undue advantage of the sale deed, claimed that he is exclusive owner of the suit property. The Appellate Court has every power to grant stay under Order XLI, Rule 5 of the Civil Procedure Code. Therefore, it cannot be said that the stay granted by the Appellate Court is illegal. At the most, the District Judge, Achalpur can be directed to decide the appeal expeditiously. The petition is devoid of merits. Hence, the same is dismissed with no order as to costs.

However, the District Judge, Achapur is directed to decide Regular Civil Appeal No.13 of 2019 expeditiously, within a period of three months from the date of receipt of this order.

This order be communicated to the Counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

ssjaiswal