IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

921. WRIT PETITION NO.7354 OF 2020

Manik S/o Dashrath Pawar (Died)
through Legal representatives:

1. Machhindra S/o Manik Pawar,
age 63 years occupation agriculture

2. Sindhubai Manik Pawar,
age 60 years occup. agriculture

3. Bajirao S/o Sambhu Pawar,
age 73 years occup. agriculture

All R/o Karkhel (Bk) Taluka Ashti Dist. Beed. ...Petitioners

VERSUS

1. Keru S/o Bhaguji Kawale,
age 70 years occup. agriculture
R/o Karkhel (BK.) Tal. Ashti Dist. Beed

2. Bhausaheb S/o Kerunna Zinjurke (Died)
Through legal representatives:

2/A. Dwarkabai Bhausaheb Zinjurke,
age 53 years occup. Agril.

2/B. Rameh S/o Bhausaheb Zinjurke,
age 35 years occup. Agri.

2/C. Sugriv S/o Bhausaheb Zinjurke,
age 27 years occup. Agri.

2D. Tai Bhausaheb Zinjurke,
age 30 years occup. Agri.
Nos. 2A to 2D R/o Dhamangaon Tal. Ashti Dist. Beed
...Respondents

Mr. S.L. Bhapkar, Advocate for petitioners
Mr. D.R. Jaybhar, Advocate for the respondents

CORAM : N.J. JAMADAR, J.

DATE : 17th March, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and with the consent of the parties, heard finally at the stage of admission.

2. The challenge in this petition is to an order dated 25th September 2020 passed by the learned District Judge-1, Beed, on an application (Exh.No.5 in Regular Civil Appeal No. 77 of 2020) filed by respondent No.1 herein for stay to the execution, operation and implementation of the decree passed in Reg. Civil Suit No. 869 of 2013, by the learned Civil Judge (J.D.), Ashti, dated 14th July 2020, under the provisions of Order XLI Rule 5 of the Code of Civil Procedure, 1908, whereby the learned District Judge was persuaded to partly allow the said application and direct the parties to maintain *status quo* as regards the title to the suit land, as of the date of the order, till the disposal of the appeal, subject to deposit of costs. By the impugned order, the appeal was also directed to be heard expeditiously.

3. Though the dispute has checkered history, it would be suffice to note that the petitioner herein instituted the suit for declaration of ownership over the land being Survey No. 11/A/1 admeasuring 2H.57R situated at village Karkhel Tal. Ashti and the cancellation of the sale deed dated 8th December 2010 executed by the respondent-defendant No.1 in favour of Bhauaheb Zinjurke, the predecessor-in-title of respondents No. 2A to 2D. The petitioner claimed that defendant No.1 has executed the sale deed in favour of deceased defendant No.2 without any right, title and interest vested in defendant No.1. The said sale deed was executed despite the fact that the previous proceedings instituted at the instance of defendant No.1, his father and son were all decided against defendant No.1. Yet, brazenly the sale deed was executed.

4. The trial Court, *inter-alia*, found that the sale deed executed by defendant No.1 in favour of deceased defendant No.2 was illegal and the plaintiffs were entitled for declaration of title as well as the relief of cancellation of the said sale deed. The suit came to be, thus, decreed in the following terms:

> " *(1) Suit is decreed with costs.*
> *(2) It is declared that, plaintiffs along with their family members i.e. all the legal heirs of the Sambhu and Dasharath are owners of the suit*

land Sy.No. 11/A/1 admeasuring area 12 Acre 35 R by virtue of Sale Deed of dated 20/05/1935 executed in favour of plaintiff's predecessor Sambhu by Raghu who is predecessor of defendant No.1.

(3) It is hereby declared that, sale deed executed by deft.No.1 in favour of deft.No.2 of dated 08/12/2010 vide Reg. No. 4653/2010 is illegal and void and not binding on the plaintiff's family and it is hereby cancelled.

(4) The precept be sent to the Sub-Registrar, Ashti for the cancellation of sale deed vide Reg.No. 4653/2010 of dated 08/12/2010, as declared above.

(5) Decree be drawn accordingly."

5. Being aggrieved, respondent No.1 herein preferred appeal before the District Court, being Reg. Civil Appeal No. 77 of 2020. In the said appeal, respondent No.1 sought stay to the execution, operation and implementation of the aforesaid decree, by filing application (Exh.5) under Order XLI Rule 5 of the Code. The learned District Judge was of the view that no *prima-facie* case was made out by the appellant for grant of stay to the execution of the decree. Yet, the learned District Judge was persuaded to direct the parties to maintain the status-quo. Hence, the petitioners-original respondents No. 1/A, 1/B and 2 have invoked the writ jurisdiction of

this Court.

6. Heard the learned Counsel for the petitioners and the learned Counsel for respondent No.1, the appellant in Reg. Civil Appeal No. 77/2020. An affidavit-in-reply is tendered by respondent No.1 wherein it is averred that respondent No.1 is still in physical possession and cultivation of the suit land and, thus, the impugned order deserves to be continued till the disposal of Reg. Civil Appeal No. 77/2020.

7. The learned Counsel for the petitioner would urge that after recording the history of the litigation, which reflects upon conduct of respondent No.1, the learned District Judge rightly recorded that no *prima-facie* case was made out to stay the execution and operation of the decree. However, the District Court fell in error in directing the parties to maintain *status quo* as regards the title of the suit land without any reason, much less justifiable one. The said direction in effect amounts to stay the execution and operation of the decree assailed before the District Court. It was further urged that the contention of respondent No.1 that he is still in possession and cultivation of the suit land despite having sold it to the predecessor-in-title of respondents No.2A to 2D

underscores the extent to which respondent No.1 has utilised the litigation to defeat the rights of the plaintiffs-petitioners.

8. In contrast to this, the learned Counsel for respondent No.1 submitted that since the District Court has directed that the appeal be heard expeditiously and *status quo* has been directed to be maintained till the disposal of appeal only, at this juncture, this Court may not entertain the writ petition. A direction to hear and decide the appeal within a stipulated period would, according to the learned Counsel for respondent No.1, meet the ends of justice.

9. The aforesaid submission can be appreciated in a proper perspective in the backdrop of the reasons which weighed with the District Court to pass the impugned order. Para 6 of the impugned order reads as under:

> *" 6) Present litigation has checkered history. The father of respondent No.2 and uncle of respondents No. 1/A and 1/B namely Sambhu had filed Reg. civil Suit No. 57/01/1349 Fasli against the father of appellant Bhaguji for declaration of ownership and possession. The said suit was decreed in favour of Sambhu. After the demise of Sambhu, the suit land was recorded in the name of respondents No. 1/A, 1/B and 2. The appellant and his father filed various*

proceedings in respect of suit land. The father of the appellant had filed Reg. Civil Suit No. 78/1978 for declaration of ownership on the basis of adverse possession and for perpetual injunction, which is dismissed. The Reg. Civil Appeal file against said decree bearing Reg.Civil Appeal No. 89/1995 and second appeal No. 1185/2005 came to be dismissed. Thus, the decree passed in the aforesaid suit has attained finality. The son of appellant has filed Reg. Civil Suit No. 148/2020 for partition and separate possession which include the suit property. It is also dismissed with costs. Appellant despite having knowledge of the dismissal of second appeal by the Hon'ble High Court got executed disputed sale deed dated 8.12.2010 in favour of respondents No. 3 to 6 claiming himself to be the owner of the suit land and recorded the name of the purchaser in the revenue record. Therefore, respondents No.1/A, 1/B and 2 were required to face revenue proceedings before Revenue Authority at various level. Taking into consideration the stand of the appellant in the suit filed by his father, son and his defence in the aforesaid suit, it appears to me that no prima facie case has been made out by the appellant for grant of stay to the execution of the decree. However, in order to protect the interest of both the parties, I am of the opinion

that if both the parties are directed to maintain status-quo as regards to the title o0f the suit land as on today till the disposal of an appeal, would suffice the purpose. Hence, the following order. **"**

10. Evidently, the learned District Judge noted that there were three sets of the proceedings spread over three generations. The first commenced with Reg. Civil Suit No. 57/01/1339 *Fasli* against the father of respondent No.1 herein for declaration of ownership and possession. The said suit was decreed in favour of the predecessor-in-title of the petitioners. The second was a suit, being Reg. Civil Suit No. 78 of 1978, instituted by the father of respondent No.1 for declaration of ownership on the basis of adverse possession. The said suit and the appeal were again decided against respondent No.1 and his predecessor-in-title. The third was a suit, being Reg. Civil Suit No. 148 of 2010, at the instance of the son of respondent No.1, which also failed upto the Appellate Courts.

11. In the aforesaid backdrop, the District Court recorded a categorical finding that no *prima-facie* case was made out for grant of stay to the execution of the decree. However, the District Court was of the view that, to protect the interest of both the parties, they ought to be directed to maintain *status quo* as regards the title of

the suit land and, thus, proceeded to pass the impugned direction.

12. The Appellate Court is empowered to stay the execution and operation of decree appealed against only when a sufficient cause is made out for stay to the execution and operation of the decree. Having recorded a categorical finding that no *prima-facie* case was made out for grant of stay, the Appellate Court could not have indirectly stayed the execution and operation of the decree by directing the parties to maintain *status quo* as regards the title of the suit land. It is imperative to note that, by the impugned decree, the trial Court had also ordered cancellation of the instrument. If the District Court found that there was a sufficient cause for directing the stay of the execution of the said part of the decree, it could have legitimately passed an order for stay. However, once a finding was recorded that no case for stay was made out, the District Court could not have brought about the same result in an indirect manner by directing the parties to maintain *status quo* as regards the title to the suit land.

13. The impugned order is thus wholly unsustainable to the extent it directs the parties to maintain the *status quo*.

14. The petition, therefore, deserves to be allowed. Hence,

the following order.

O R D E R

I) The petition stands allowed.

II) The direction of the District Court in clause No.(1) of the impugned order to the effect that the parties shall maintain *status quo* as regards the title to the suit land as of the date of the order till the disposal of the appeal, stands quashed and set aside.

(III) In the circumstances, there shall be no order as to costs.

(IV) Rule made absolute in aforesaid terms.

(N.J. JAMADAR)
JUDGE

Madkar