

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.14893 OF 2013**  
**IN SA/805/2013**

RAOSAHEB S/O YESBA SARTAPE  
VERSUS  
BALVEER S/O SHANKAR SARTAPE AND ORS

**WITH**  
**CA/10636/2015 IN SA/805/2013**

.....  
Mr. S. V. Natu, Advocate for respondent No.1 in CA/14893/2013.  
.....

**CORAM : SMT. VIBHA KANKANWADI, J.**

**Reserved on : 20.07.2021**

**Pronounced on : 27.07.2021**

**ORDER :-**

. Civil Application No.14893 of 2013 has been filed by the applicant-appellant for stay and Civil Application No.10636 of 2015 has been filed for vacating stay.

2. It will not be out of place to mention here that by order passed by this Court on 13.07.2021 in Civil Application No.5777 of 2021, it was held that Civil Application No.14893 of 2013 is still pending and the order passed by this Court on 28.01.2014 was only the ad-interim protection and, therefore, both the applications i.e. for stay and vacating stay were kept on 15.07.2021 for hearing. On that day, learned

Advocate Mr. Chavan holding for learned Advocate Mr. Halkude for respondent in application for stay and for applicant in application for vacating stay sought accommodation and, therefore, the matter was kept on 20.07.2021, however, on 20.07.2021, learned Advocate Mr. Halkude was absent. Nobody sought adjournment on his behalf and, therefore, the matter was kept for orders. Further, it can be seen that the second appeal came to be admitted by this Court by framing substantial questions of law. Under the said circumstance, it was necessary to see as to whether case is made out to grant stay to the impugned decree till the hearing and final disposal of the second appeal.

3. Heard learned Advocate Mr. S. V. Nattu for respondent No.1. In order to cut short it can be said that he has made submissions in support of his contention.

4. Respondent No.2 in Civil Application No.14893 of 2013 is original defendant No.2. He has filed Regular Civil Suit No.85 of 1976 for declaration that he is the owner of the 1/3rd portion of the suit house and sought injunction against the appellant-original plaintiff and two other persons. It was held by the learned Civil Judge Junior Division, AUSA by decree dated 15.09.1980 that the plaintiff has proved his title to the suit house and open plot, however, it was held that he is not entitled to recover the possession from defendant Nos.1 and 2 therein. The said

suit was dismissed.

5. Present appellant is the original plaintiff. He has filed Regular Civil Suit No.288 of 1994 for perpetual injunction in respect of house property bearing House Nos.12/1, 12/2, 12/3 admeasuring 41.44 Sq. fts. in village Sindalwadi, Dist. Latur. Learned Civil Judge, Junior Division, Ausa had dismissed the suit, however, allowed the counter claim filed by the defendants. Plaintiff was directed to remove his illegal construction over the 1/3rd space of the suit property from western side. Thereafter, the present appellant-original plaintiff filed Regular Civil Appeal No.03 of 2009 before the learned District Court, Latur. The appeal was heard by learned District Judge-2, Latur and it came to be dismissed on 24.09.2013.

6. Important point to be noted is that the learned Trial Judge has held that the plaintiff is the owner to the extent of 32 fts. x 25.5 fts. and then it is held that defendant Nos.2 and 3 have proved that the plaintiff has made illegal construction on rest of the area. There was also an earlier litigation i.e. Regular Civil Suit No.85 of 1976 between the parties and, therefore, it was required to be considered as to what is the effect of that decree on the title of the parties before this Court. It also appears that the plaintiff had then contended that he has become owner of the suit property by adverse possession to the extent the counter

claim was filed by the defendants. If that part of the defence is required to be considered, then it appears *prima facie* that no specific issue to that effect was framed by the learned Trial Judge and, therefore, when question of title is involved and the appeal is admitted, the construction that has been directed to be removed deserves to be protected till the second appeal is heard and disposed of and, therefore, now, the detailed order in respect of the stay is required to be passed. It appears that Civil Application No.10636 of 2015 was filed under presumption that stay is already granted, but when now the opportunity was given to the applicants therein to make submissions, learned Advocate was absent and, therefore, that application deserves to be rejected. Hence, the following order :-

### **ORDER**

- I) Civil Application No.14893 of 2013 is hereby allowed and disposed of.
- II) There shall be stay in terms of prayer clause 'A' till the final hearing and disposal of second appeal No.805 of 2013.
- III) Civil Application No.10636 of 2015 stands rejected.

**[SMT. VIBHA KANKANWADI, J.]**

scm