

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

933 CIVIL APPLICATION NO.8548 OF 2020
IN
SA/492/2015

**PRAKASH SHESHERAO SURYAWANSHI AND OTHERS
VERSUS
NILABAI PRAKASH SURYAWANSHI AND OTHERS**

Advocate for Applicants : Mr. Mukhedkar Amit A.
Mr. BG Deshmukh, Adv. For R/1 To3;
Mr.AD Hande, Adv. For R/4.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 5th February, 2021.

PER COURT:-

1. Heard both sides. What can be gathered from their submissions is that the T.I.L.R., Nanded has gone ahead with measurement and has prepared panchanama. It appears that the execution proceedings are still pending before 8th Jt.CJJD, Nanded and learned Advocate for Respondent Nos. 1 to 3 submits that in view of the order passed by learned District Judge-2, Nanded, precept came to be issued. In fact, when the original decree was passed by 7th Jt.CJJD, Nanded and the appeal, arising from that decree, was decided by the learned District Judge-2, Nanded, which appears to be a modification, therefore, the said decree gets merged in the decree passed by the 7th Jt.CJJD, Nanded and under such circumstance, when the execution proceedings are still pending, the order could not have been a direct precept on the basis of the order passed by the learned District Judge-2, Nanded.

(2)

2. As on today, it appears that the measurement has been carried out and the panchanama has been drawn to that extent. But, then when the Second Appeal is filed, which is for admission, it is necessary to stay further proceedings before the T.I.L.R. or any other authority; so also, the further proceedings in Regular Darkhast to the extent of handing over the possession. Hence, following order, -

ORDER

- i. The application stands partly allowed;
- ii. The judgment and decree dated 28.7.2008 passed by learned 7th Jt.Civil Judge, Junior Division, Nanded in RCS No.598/1999 and the judgment and decree dated 19.10.2012 passed by learned District Judge-2, nanded in Regular Civil Appeal No. 115/2008 are hereby stayed to the extent of possession. So also the further proceedings in Regular Darkhast No. 71/2019 pending before learned 8th Joint Civil Judge, Junior Division, Nanded are stayed only to the extent of handing over the possession as per the decree, till decision in Second Appeal No.492/2015.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV