

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10175 OF 2019

Mr. Sanjay Madhukar Kale & Ors. Petitioners
(Ori. Plaintiffs 1 & 2)

Vs.

Mr. Balbhim Bhaguji Thombare Respondent
(Ori. Defendant)

Mr. Dheeraj Patil i/by Mr. Pavan S. Patil for Petitioners.

Coram : NITIN W. SAMBRE, J.
Date : 18TH FEBRUARY, 2021

P.C.:

1. This petition is filed by the decree-holder. The trial Court has passed a decree in Regular Civil Suit No.9 of 2017 thereby directing the Respondent to handover possession of encroached area of land Gat No. 206, to the extent of 5.70 R.

2. The application, Exhibit 8 came to be moved in a Civil Appeal No. 144 of 2018, wherein the Respondent questioned the decree. The said application, Exhibit 8 came to be allowed thereby

staying the execution of judgment and decree dated 13th April 2018 in Regular Civil Suit No. 9 of 2017. The application, Exhibit 17 was moved by the Petitioner decree-holder for permission to lead evidence, which came to be rejected, as such the common order passed below Exhibits 8 and 17, by the appellate Court on 2nd November, 2018 is questioning.

3. The submissions are, the Respondent has failed to appear in the suit proceedings, as no Written Statement came to be filed or any evidence is adduced and that being so, the lower appellate Court ought not to have been granted stay in favour of the Respondent. Further contention is, without any sufficient cause, an application Exhibit 17 is rejected.

4 I have considered submissions.

5. The decree is for removal of encroachment and for possession. In that view of the matter, the order of grant of stay to the execution of the decree dated 2nd November, 2018 does not call for any interference.

6. In that view of the matter, the petition is dismissed.

7. However, the hearing in Regular Civil Appeal No. 144 of 2018 pending on the file of District Judge, Baramati is expedited. Let the appeal be decided within a period of nine months from today.

(NITIN W. SAMBRE, J.)