

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

921 CIVIL APPLICATION NO.1432 OF 2022
IN SA/30/2015

**MADHUKAR ASARAM TRIBHUWAN AND OTHERS
VERSUS
MOHAMMAD SK. HANEEF AND OTHERS**

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Advocate for Applicants : Mr. Deshmukh Vijay Vasantrao
Advocate for Respondents : Mr. Shaikh Mjtaba Gulam Mustafa.

CORAM : MANGESH S. PATIL, J.
DATE : 05.04.2022.

PER COURT :

This is an application for injunction by the respondents in the second appeal who are the original plaintiffs, who have succeeded in obtaining a decree for mandatory injunction directing the appellant to remove the construction already carried out on the suit plot and to put the respondent in possession.

2. By way of this application it is now being complained that in spite of the appellants having suffered the decree and which is stayed pending the second appeal, they have erected a new tin shed apart from the house which they have already erected. It is contended that the respondents cannot be allowed to use the tin shed now erected over the suit plot. They cannot be allowed to reap the benefit of the stay order and alter the situation of the suit plot.

3. The learned advocate Mr. Mustafa for the appellants submits that already the tin shed has been erected and if and when the decree is put to execution, the applicants would be under obligation to remove the construction or structure.

4. True it is that the respondents have succeeded in obtaining a decree for possession as well as mandatory injunction. It is also apparent that a tin shed has been erected in the recent past during pendency of this second appeal which was not there all throughout. It is thus quite clear that the appellants are bent upon to change the situation at the spot.

5. Though the respondents have been claiming a mandatory injunction and would be entitled to remove whatever structure that is standing on the suit plot, that does not mean that the appellants could go on altering or changing the suit plot according to their own desire. That would be like playing in his hands when he has already suffered a decree, execution of which is stayed pending final hearing of the appeal.

6. However, when the tin shed has already been erected at the spot, it would be for the benefit of no one to allow it to go waste. The fact remains that the respondents apparently did not object while the shed was in the process of erection.

7. In view of the above, the application is partly allowed. The appellants shall not carry out any further construction even of a temporary nature in the suit plot till final disposal of the second appeal.

8. The prayer to restrain the appellants from using the shed, is rejected.

(MANGESH S. PATIL, J.)

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