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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6515 OF 2021

SUBHASH RAMCHANDRA SALUNKHE
AND ORS

....PETITIONERS/
DEFENDANTS/
APPELLANTS

V/s.

KONDABAI MARUTI SALUNKHE AND ORSRESPONDENTS

Mr. Dilip Bodake Advocate for Petitioners

Mr. Vaibhav R. Gaikwad Advocate for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 22, 2022.

P.C.:

1) Petitioner has suffered a Decree for partition in R.C.S. No. 3/2008. While answering issue no. 2 in the said Suit for partition which is pertaining to Plaintiff's possession over the Suit property, Trial Court by a reasoned order, having regard to documentary evidence, has recorded a finding that Respondent-Plaintiffs are in settled possession of 13 Ana share in the Suit property.

2) Petitioner, feeling aggrieved approached the Appellate Court and

sought stay to the execution of the Decree. Vide impugned order, Appellate Court restrained the Decree Holder-Respondent from creating third party interest based on mutation in his name.

3) The contentions of Mr. Bodake, learned counsel for the Petitioner-Appellant are, Statute contemplates lawful right in Petitioner-Appellant to seek stay of the execution of the Decree. According to him, if the execution is not stayed, said will give rise to further complications as the Decree is for partition. According to him, in the interest of justice, hearing of the Appeal can be expedited by staying execution of the Decree.

4) Prayer is opposed by the Decree Holder.

5) The fact remains till this date Decree Holder has not initiated proceedings for execution, as such question of staying the execution of Decree does not arise.

6) Apart from above, this Court is sensitive to the fact that based on the findings of possession to the extent of 13 Ana share in the Suit property, way back mutation was effected in favour of Decree Holder. Suit property is already secured by Appellate Court thereby directing Respondent Decree Holder not to create third party interest.

7) In the aforesaid background, I hardly see any reason which warrants interference in the impugned order. Writ Petition as such stands dismissed.

8) Hearing of the Appeal is expedited.

9) Counsel for the Petitioner-Appellant to file paper-book before the Appellate Court within period of 4 weeks from today.

[NITIN W. SAMBRE, J.]