



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13700 OF 2022

IN

FIRST APPEAL NO.2713 OF 2022

WITH

FIRST APPEAL NO.2713 OF 2022

- 1 Baburao Bhanudas Shinde,
Age 62 yrs., Occ. Agri.,
R/o Shinde Galli, Omerga,
Tq. Omerga, Dist. Osmanabad.
- 2 Ravanbai Bhanudas Shinde (Dead)
(Her name is deleted)
- 3 Vandana Baburao Shinde,
Age 60 yrs., Occ. Household,
R/o Shinde Galli, Omerga,
Tq. Omerga, Dist. Osmanabad.
- 4 Anuradha Abhay Chavan,
Age 35 yrs., Occ. Household,
R/o Ekondi Road, Behind Jail,
Omerga, Tq. Omerga, Dist. Osmanabad.

... Applicants

... **Versus** ...

- 1 Lochanabai Nivrutti Survase (Died)
Since deceased through his legal representatives -
 - 1.1 Shivprasad Nivrutti Suryawanshi,
Age 46 yrs., Occ. Agri.,
R/o Omerga, Tq. Omerga,
Dist. Osmanabad.
 - 1.2 Rajmati Madhavrao Tare,
Age 60 yrs., Occ. Household,

R/o Killari Sugar Factory,
Tq. Ausa, Dist. Latur.

- 1.3 Suman Suryakant Bhosale,
Age 56 yrs., Occ. Household,
R/o Killari, Tq. Ausa,
Dist. Latur.
 - 1.4 Mira Nivrutti Suryawanshi,
Age 52 yrs., Occ. Service,
R/o Osmanabad,
Tq. & Dist. Osmanabad.
 - 1.5 Smita Prakash Chavan,
Age 41 yrs., Occ. Service,
R/o Jagdalwadi, Tq. Omerga,
Dist. Osmanabad.
- 2 Vaijanti @ Vijayabai Govindrao Patil,
Age 51 yrs., Occ. Household,
R/o Balsur, Tq. Omerga,
Dist. Osmanabad.
 - 3 Sakhubai Suresh Jamge,
Age 55 yrs., Occ. Household,
R/o Tugaon (Yenegur), Tq. Omerga,
Dist. Osmanabad.

... **Respondents**

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Mr. P.R. Katneshwarkar, Advocate h/f Mr. M.S. Bhosale, Advocate for
applicants

Respondent Nos.1/1 to 1/5 - served

Mr. N.B. Khandare, Advocate for respondent No.2

Mr. M.M. Patil, Advocate for respondent No.3

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**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 18th OCTOBER, 2023

PRONOUNCED ON : 29th NOVEMBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the appellants – original defendants to stay the execution of the Judgment and Decree passed in Special Civil Suit No.4/2020 before learned Civil Judge Senior Division, Omerga, Dist. Osmanabad on 06.05.2022. The suit filed by the present respondents came to be partly decreed, which was for partition and separate possession. It has been declared that the plaintiffs have 1/4th share each in the suit property described in plaint paragraph No.1 and 12-A. The decree has also been passed in respect of partitioning the house property described in plaint paragraph No.1C and compensation amount in paragraph No.12-A.

2 The appeal filed by the present applicants has not been admitted yet, but since it is a First Appeal, it deserves to be admitted.

3 Heard learned Advocate Mr. P.R. Katneshwarkar holding for learned Advocate Mr. M.S. Bhosale for applicants, learned Advocate Mr. N.B. Khandare for respondent No.2 and learned Advocate Mr. M.M. Patil for

respondent No.3 and perused the impugned judgment.

4 It appears that the present applicants – defendants had come with a case that there was previous partition between defendant No.1, 4 and 5 prior to the incident and defendant Nos.2 and 3 have relinquished their rights and shares in the suit properties in favour of the defendants. The learned trial Judge has held that the suit properties are ancestral and Joint Family properties of the parties to the suit. Here, itself we can make a cursory remarks that it appears that the learned trial Judge has not considered the difference between what is ancestral property and what is Joint Family property. These two are different concepts, though on many occasions this Court has observed that even the Advocates commit mistake in characterizing the property as either ancestral and/or Joint Family property. Further it appears that original defendant No.2's name came to be deleted as she had expired. Still then the issue as regards non joinder of necessary parties appears to have been answered in the negative. The compensation amount which was the subject-matter of the suit was Rs.1,78,21,620/-. However, while making submissions it has been stated that certain portion of the same has already been withdrawn. It appears that the father of the original plaintiff expired on 08.09.1975. The original plaintiffs are the married sisters/daughters. From 24.09.1976 the lands appear to be mutated

in the name of defendant No.1 and, therefore, there appears prima facie evidence to show that he is in possession of the properties since after the demise of the father. As the appeal is not admitted and for the above said reasons, which require now the re-assessment of the evidence, the appeal is **admitted** and, therefore, till the appeal is heard the impugned judgment and decree deserve to be stayed.

ORDER

1 Application stands allowed.

2 There shall be stay to the impugned Judgment and Decree dated 06.05.2022 passed in Special Civil Suit No.4/2020 by Civil Judge Senior Division, Omerga, Dist. Osmanabad, during the pendency and final decision of the First Appeal No.2713 of 2022.

3 Application stands disposed of accordingly.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)