



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

924 APPEAL FROM ORDER NO. 46 OF 2021

**MARUBAI KISHANRAO KAMBLE DIED THR LRS SOPAN KAMBLE
DIED THR LRS SAJABAI S KAMBLE
VERSUS
JAIWANT SANGRAM PATIL AND OTHERS**

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Mr. K.P. Rodge, Advocate holding for Mr. P.G. Rodge,
Advocate for the appellant.

Mr. Jaydeep Kadam, Advocate holding for Mr. V.D. Salunke,
Advocate for respondent No.1.

Mr. V.S. Badakh, A.G.P. for respondent Nos.2 to 4.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 28 February 2024

P. C. :

1. Heard rival submissions.
2. It appears that original suit i.e. R.C.S. No. 17/2016 was filed by original appellant for declaration of ownership and for perpetual injunction against the present respondents. The learned trial Court decreed the suit partly only in respect of granting perpetual injunction. Respondent No.1 filed appeal against the said decree before the learned first appellate Court i.e. District Judge-2, Udgir bearing R.C.A. No. 33/2019, which is still pending. In the said appeal, respondent No.1 had filed application (Exh.5) for stay to the decree passed by the learned trial Court which was allowed on 16.12.2019. Against that the present proceedings were initially

lodged in form of Writ Petition, wherein this Court vide order dated 29th January 2020, had directed the parties to maintain status-quo in respect of possession of the suit property. The order is still continued till today.

3. Under such circumstances, the learned counsel for respondent No.1 admits that the present appellants are in possession of the suit property and therefore, requested that in the present circumstances the appeal can be heard on merit by the concerned learned appellate Court. The learned Counsel for the appellants as well as learned A.G.P. are not having any objection to the aforesaid suggestion made by learned Counsel for respondent No.1. In view of the same, by keeping the order of status-quo passed by this Court on 29.01.2020 as it is, the order passed by the learned first appellate Court below Exh.5 is set aside and the present appeal is accordingly disposed of with direction to learned first appellate Court to decide the appeal i.e. R.C.A. No. 33/2019 on its own merit as early as possible.

(SANDIPKUMAR C. MORE, J.)