



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

**CIVIL APPLICATION NO. 3748 OF 2024
IN SA/14/2013**

**ANANT BANSI JOSHI AND ANOTER
VERSUS
KAMALBAI MADHUKAR DANE AND ORS**

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicants
Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Shriram V.
Deshmukh, i/b Mr. Devang R. Deshmukh, Advocate for respondent
Nos. 1A to 1C, 1F, 2 and 16 in SA.

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 17 APRIL 2024

PER COURT :-

1. Heard the learned Counsel appearing for the applicants and the learned Counsel for the non applicants at length.

2. By the present application, the original defendant Nos.8 and 9 who are the vendees of defendant No.3, present appellant No.2, have put forth following prayers:-

“(B) The execution of decree in regular civil suit No.06 of 1993 passed by learned Civil Judge, Junior Division, Jafrabad and affirmed by learned District Judge-3, Jalna in regular civil appeal No.85 of 2005, may kindly be stayed till the final decision of present second appeal;

(C) To stay the execution of decree passed by learned Civil Judge, Junior Division, Jafrabad in regular civil suit No.06 of 1993 passed by learned Civil Judge, Junior Division, Jafrabad and affirmed by learned District Judge-3, Jalna in regular civil appeal No.85 of 2005, till the final decision of present civil application.”

3. The respondent Nos. 1 A to F in the present appeal, are the legal heirs of original plaintiff, who had filed R.C.S. No.6 of 1993 and prayed for declaration, partition and separate possession, so also setting aside the alienation made in favour of defendant Nos. 8 and 9 by the original defendant No.3. After full fledged trial, on 13.04.2005, the learned trial Court decreed the suit holding that the plaintiff is entitled for partition and separate possession of 1/4th share in the suit lands Gat No.282 admeasuring 2 H 55 R, Gat No. 217 admeasuring 5 H 58 R, Gat No. 316 admeasuring 3 H 12 R, Gat No.362 admeasuring 10 H 92 R and Gat No.308 admeasuring 3 H 91 R, as described in paragraph No.1 of the judgment.

4. Being aggrieved by the said judgment and decree, the original defendant Nos.2, 3 and 4 had filed R.C.A. No.85 of 2005. On 28.09.2012, the learned first appellate Court dismissed the appeal and confirmed the judgment and decree passed by the learned trial Court.

5. On perusal of the judgment and decree dated 13.04.2005 passed in R.C.S. No.6 of 1993, no any decree is passed as against the present applicants who are the vendees of original defendant No.3. Therefore, the right of the present applicants does not prejudice. Therefore, the prayer for stay to the execution of decree is not maintainable at the behest of the vendees of original defendant No.3.

6. Accordingly, the civil application is dismissed.

[Y. G. KHOBRAGADE, J.]

SMS