



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12883 OF 2023

Ramesh Pandurang Bari Lavne And Others
VERSUS
Sudam Lahanu Bari And Others

- Mr. A. I. Deshmukh, Advocate for the Petitioners
- Mr. M. G. Patil, Advocate for the Respondent Nos. 1, 2, 3, 7, 9, 10, 12 & 13

CORAM : R.M. JOSHI, J
DATE : NOVEMBER 25, 2024

PER COURT :

1. During the course of hearing, learned Counsel for Petitioners/successful Plaintiffs in RCS No. 211/2017, on instructions, submits that at this stage Petitioners are aggrieved by the stay of clause no. 5 of the operative part of the judgment and decree dated 28.02.2023 passed therein. It is the submission of learned Counsel for the Petitioners that the Trial Court while decreeing the suit and after going through the evidence led before it, has recorded findings about Petitioners are in possession of the suit property. Upon recording this finding of fact, injunction came to be granted against Defendants restraining them from causing obstruction to the Plaintiffs possession over

the same. The First Appellate Court without recording any finding as to the Defendants having in possession of the suit property has stayed the entire judgment and decree including clause no. 5, which has caused great prejudice to the Petitioners/Plaintiffs. He, therefore, seeks modification of the order excluding application of clause no. 5 of the impugned order from order of stay granted by the Appellate Court.

2. Learned Counsel for Respondents/Original Defendants tried to support the impugned order. It is his submission that against judgment and decree passed by the Trial Court as of right a right first appeal is filed and as such, impugned order does not deserve interference.

3. Undisputedly, it is open for the Defendants to file an appeal as of right against the judgment and decree. However, mere filing of the Appeal would not lead to staying the impugned judgment and decree. It was necessary for the Respondents to satisfy the First Appellate Court about their possession over the suit property. It is only after recording *prima facie* findings about possession of the Defendants over the

suit property, order of stay to the clause no. 5 of the operative part of the judgment and decree dated 28.02.2023 could have been passed. Perusal of the order passed below Exh. 5 in RCA No. 96/2023 does not show any such finding recorded by the First Appellate Court. The First Appellate Court, therefore, has committed error in staying clause no. 5 of the judgment and decree passed by the Trial Court. As such, impugned order deserves modification.

4. It is clarified that order of stay granted by the First Appellate Court dated 09.08.2023 does not apply to clause no. 5 of the judgment and decree dated 03.03.2023 passed in RCS No. 211/2017.

5. Petition stands disposed of in above terms.

(R.M. JOSHI, J.)