



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO. 203 OF 2024

Mahaling Nagnath Shete
(Deceased through LRrs) & othersPetitioners

VERSUS

Manmath Nagnath Shete
(Deceased through LRs) & othersRespondents

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Mr. S. B. Bhapkar, Advocate for the Petitioners
Adv. R. R. Tandale, AGP for the State.

CORAM : S. G. CHAPALGAONKAR, J.
DATE :8th AUGUST, 2024.

PER COURT :

1. Heard Mr. Bhapkar, learned counsel for the Petitioners.
2. The contention of the Petitioners is that in pursuance of a decree passed in Regular Civil Suit No. 155/2003 dated 22.02.2007, a precipe under Section 54 of Code of Civil Procedure has been sent to the Tahsildar. He submits that although the Petitioners have filed an appeal before the District Judge along with application for delay condonation and stay petition, the learned District Judge has not passed any order. He would further submit that the learned Tahsildar, in pursuance to the decree, has carried

out measurement and he has apprehension that the Petitioners would lose the possession.

3. It is trite that if decree is passed by the Civil Court, the appellant can pray for stay to the execution of the decree. In present case, the Petitioners have availed the remedy of filing appeal and also filed an application seeking stay to the decree. However, grievance is raised of no order being passed by the District Court on the application for stay, resultantly, the execution is proceeding and the Petitioners have every apprehension of losing the possession.

4. In these circumstances, the Petitioners pray that the proceeding in execution pending before the Tahsildar, Osmanbad, be quashed and set aside. It is difficult to accede with the prayer in the Petition. When a substantive appeal is filed before the District Court, there is no reason for this Court to entertain any prayer to stay the execution or stall the execution initiated in pursuance to Section 54 of the Code of Civil Procedure.

5. However, it is expected that the learned District Judge would take up the application for grant of stay moved by the

Petitioners and pass appropriate order in accordance with law within a period of two weeks from today. The Petitioners are at liberty to move the District Court for grant of stay and take up the matter on preponed date in pursuance to the directions as stated above. Writ Petition stands disposed of with above directions.

(S. G. CHAPALGAONKAR)
Judge

dwb