

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14081 OF 2024

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Date: 2024.10.23
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Bramhadev Laxman Tale and Ors.

...Petitioners

vs.

Prataprao Anandrao Patil (since Deceased)
through Legal Heirs

...Respondent

Mr. Lengare Y. B. :-	Advocate for the Petitioner
Mr. B. G. Ligade:-	Advocate for Respondent

CORAM : S. M. MODAK, J.

DATE : 21st OCTOBER 2024

P. C. :-

1. Heard the learned Counsel for the Petitioner-Defendant and learned Counsel for the Respondents-Plaintiffs.
2. The suit for declaration and permanent injunction was decreed by the Trial Court on 11th March 2024. The Defendants were restrained from disturbing possession of the Plaintiffs over the suit well.
3. The Defendants have filed first appeal and they applied for stay of the execution of the decree. It was rejected by the Appellate Court

as per the order dated 3rd July 2024. That is why, the present writ petition.

4. Learned Advocate for the Respondents taken objection to the maintainability of this writ petition. He relied upon the observations in case of **Shivaji Shankar Jadhav Vs. Laxman Gajanan Godbole** reported in (2019) (3) Mh. L.J. 767. I have read it. The issue involved in that matter is about powers of Appellate Court to grant injunction under Order 39 Rule 1 and 2. There was a suit which was dismissed and Plaintiff's appeal was against it. It is interpreted that temporary injunction application can be filed in the first appeal and the order passed therein can be challenged by way of an appeal under Order 43 Rule 1(r) of the CPC. In this case, the Petitioners/Defendants have not prayed for injunction but stay of the decree. Such application can be filed under the provisions of Order 41 Rule 5 of the CPC. The objection to maintainability is turned down.

5. Learned Counsel Mr. Lengare tried his best to convince me to stay the execution of the decree. He invited my attention to an application filed by the Plaintiff's to Police Station Atpadi. (page 97. He invited my attention to the application in para No.36. This application was not available before the Trial Court. The Petitioners

applied under Order 41 Rule 27 of CPC. However that application is pending.

6. When the Trial Court is granted permanent injunction, this matter needs to be heard at length. Both the parties are at liberty to file the pleadings and evidence on next date before the Trial Court.

7. In the meant time, if they want, they can appear before the Mediator.

8. In the mean time, the dispute is referred to District Legal Services Authority Sangli.

9. Parties can appear before the Secretary on 12th November 2024 at 11.00 a.m. for the purpose of mediation.

10. learned Counsel Mr. Lengare insisted for passing of some interim order because his crop is in that filed. It cannot be considered without the documents and pleadings are perused.

11. Liberty to place the documents to show the standing crop is granted.

12. Stand over to **4th December 2024.**

[S. M. MODAK, J.]