

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16421 OF 2024

Kanchan Santosh Patil

.Petitioner

Versus

Sujay Chauhan & ors.

.Respondents

Mr. Gauraj Shah i/b. Ms. Sneha A. Nagaonkar, Advocates, for the
Petitioner/Original Plaintiff

Mr. Aseem Naphade a/w. Mr. Ramiz Shaikh, Ms. Shama Bothe
i/b. Rizwan Merchant & Associates, Advocates, for Respondent
No. 1/Original Defendant No. 1

CORAM : S. M. MODAK, J.

DATE : 26.11.2024

P. C.

1. Heard Mr. Shah, learned Counsel for the Petitioner/Original
Plaintiff and Mr. Naphade, learned Counsel for Respondent
No. 1/Original Defendant No. 1.

2. The Suit was filed by one Mr. Bhaskar Narayan Patil. He has
challenged the Sale Deed executed by his son Sandesh – Defendant
No. 2 in purported exercise of Power of Attorney. The suit land was
sold to Defendant No. 1. According to the Plaintiff, in fact, there

was no Power of Attorney. The other family members are Defendant Nos. 3 to 6 but they have not contested the Suit. **After trial, the Suit was decreed and the Sale Deed dated 12.04.2007 was held as illegal.** During the pendency of the Suit, the Original Plaintiff expired and his daughter-in-law by name – Ms. Kanchan proceeded with the Suit on the premise that she is the legal heir of Mr. Bhaskar Narayan Patil.

3. This Judgment was challenged by Defendant No. 1 before the District Court – Alibag. **The execution of the decree was stayed on 09.08.2024.** The present Petitioner challenges the said Order for the reason that the submissions were not considered by the Appellate Court.

4. It is true as per Section 96 of the Code of Civil Procedure, 1908 (for short ‘CPC’), First Appeal is a matter of right. But to stay execution of decree is the discretion of the Court. The provision under O. XLI, Rule 5 of the CPC is the relevant provision. The stay can be subject to condition also. The Appellate Court directed Defendant No. 1/Appellant therein to deposit the amount. **Even this Court feels that the said condition is not sufficient.**

5. Admittedly, as on today, the suit land is standing in the name of Defendant No. 1 as per 7/12 extract. He needs to put to a condition so also the present Respondent No. 1/substituted Plaintiff who claims to be legal heir of the deceased Plaintiff needs to be put to condition. As contended by Mr. Naphade, learned Counsel for the Petitioner/Original Plaintiff, by modifying the Order, the Writ Petition can be disposed of.

6. In view of above, I proceed to pass the following order.

O R D E R

(i) The present Petitioner/ Plaintiff and the Respondent No. 1/Original Defendant No. 1 are hereby directed not to create any right, title or interest in favour of any person in any manner of the suit land till disposal of the Appeal.

(ii) The present Respondent No. 1/the Appellant before the District Court is directed to file a private paper book before the Appellate Court within a period of six weeks from today. It can be checked by the office. Only those charges can be recovered.

(iii) The Appellate Court to call for R & P, if not already called for.

(iv) Even both the parties can think of referring the matter to

mediation. They can express their stand clear before the Appellate Court. If they desire, it can be referred to the mediator.

(v) The Appeal be decided as early as possible and in any event, within a period of one year from today.

(vi) Above parties are directed to file an undertaking before the Appellate Court within period of 3 weeks from today in terms of directions issued here in above.

7. **The Writ Petition stands disposed of.** It is submitted that till this date, both the parties have not created any right, title or interest in the suit land.

(S. M. MODAK, J.)