

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

Writ Petition No. 16701 of 2024

Bilal Papa @ Papamiya Pakhale

(Inamdar) and others

... Petitioners

V/s.

Baburao Sampati Kamble and others

... Respondents.

Mr. Machhindra A. Patil	Advocate for the Petitioners
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CORAM : S.M. MODAK, J

DATE : 13 November 2024.

P.C. :

The matter is taken on Board by way of a praecipe.

2. Heard learned Advocate Shri Patil for the Petitioners/Plaintiffs/Respondents. Their suit was decreed by the Court of Civil Judge Senior Division on 22 April 2024. The defendant is restrained from dispossessing the plaintiff from 50 R area of the land.

3. When the defendants filed First Appeal, the appellate Court stayed the execution of the judgment and decree as per the order dated 21 June 2024 (Page-95). After hearing the Plaintiffs/Respondents, the appellate Court confirmed that order on 22 October 2024 (Page-148). The order is challenged by way of this writ petition.

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4. Mr. Patil tried to contend that the present Respondents by taking disadvantage of the stay granted, are disturbing the possession of the Petitioners-Plaintiffs over 50 R land. It is true that when the appellate Court is hearing a stay application, the considerations before the appellate Court are the evidence and findings given by the trial Court and the grounds challenging those findings. The Appellate Court has got every power to stay the execution of the impugned judgment and decree. While exercising the power, the appellate Court should be cautious in staying the said decree because in cases like this, it has got ramification on the issue of possession. According to Mr. Patil the Court has stayed the decree on the basis of submission and not considered the findings and evidence. Hence, I pass the following order:

ORDER

- (i) Issue notice to the Respondents, returnable on 8 January 2025. Private notice is allowed. Service affidavit be filed.
- (ii) Leave to amend the writ petition is granted so as to incorporate the submission that Respondents are disturbing the possession of the Petitioners. Amendment be carried out within two weeks.

(S.M. MODAK, J.)