



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2870 OF 2024

DARSHANA W/O DHANANJAY RAJURKAR AND ANOTHER

Vrs.

SOU. SHEELA W/O SAMBHAJIRAO KATKADE (DEAD) THROUGH LRS AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S. D. Chande, Advocate for petitioners.

CORAM: ANIL S. KILOR, J.

DATE : 30/04/2024.

1. The order below Exh.25 to stay carrying out the measurement of the land in dispute came to be rejected, the same is under challenge in this writ petition.

2. In the matter at hand, the Judgement and Decree passed on 10/12/2021 by the learned trial Court in suit for partition, separate possession, accounts and for recovery of damages and counter claim by defendant Nos.3 to 6 was for partition and separate possession, declaring that the plaintiffs have 1/4th share in the suit properties, the defendant Nos.1 and 2 have 1/4th share in the suit properties, the defendant Nos.3 to 5 have 1/4th share and the defendant No.6 has 1/4th share in the suit properties.

3. The petitioners were the defendant Nos.1 and 2 in the suit properties. The petitioners on filing appeal against the said Judgment and Decree, stay was granted

by the learned First Appellate Court to the Judgment and Decree dated 10/12/2021 and further stayed the possession vide order dated 30/11/2023.

4. In the above referred backdrop, the petitioners moved application Exh.25 before the Appellate Court for staying the process initiated by the respondent No.2 for carrying out the measurement, in view of the order dated 30/11/2023. The learned Appellate Court rejected the stay application on the ground that there was no stay granted to the measurement, but the stay is to the possession.

5. Since the stay granted vide order dated 30/11/2023 was to the possession and not to the measurement of the land in dispute, the application seeking stay to such measurement on the ground that the stay was granted on 30/11/2023, is itself misconceived. In the circumstances, the learned First Appellate Court has rightly rejected the application Exh.5.

6. Accordingly, I do not find merit in the present petition. Hence, it is dismissed.

[ANIL S. KILOR, J.]