



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APEAL FROM ORDER NO. 12 OF 2024

NAGNATH PHULAJI KAMTE AND OTHERS

VERSUS

RAJARAM PHULAJI KAMTE AND OTHERS

...

Mr. V. D. Patnurkar, Advocate for the Appellants

Mr. R. O. Awasarmol, Advocate for Respondent Nos.1,2C/1,
2C/2 AND 3

...

WITH

CIVIL APPLICATION NO. 4265 OF 2024 IN AO/12/2024

CORAM : S. G. CHAPALGAONKAR, J.

Dated : 03rd FEBRUARY, 2025

PER COURT :-

1. The appellants, who are original defendants in suit and appellants before the District Judge, Nanded impugns the order dated 25.01.2024 passed below Exh. 5 in Regular Civil Appeal No.85 of 2022 pending before District Court Nanded.

2. Mr. Patnurkar, learned Advocate appearing for the appellants submits that the suit instituted by respondent No.1, Rajaram seeking decree for partition, separate possession and perpetual injunction has been decreed by Trial Court without granting sufficient opportunity to the defendants to lead

evidence. The substantive appeal is filed before learned District Judge, Nanded assailing decree of the Trial Court and same is pending for consideration.

3. The appellant has also filed an application for stay to the execution and implementation of the decree in Special Civil Suit No.77 of 2012. However, said application is rejected.

4. The learned Advocate appearing for the respondent / original plaintiff submits that the Appellate Court considered all the relevant aspects and found that prima facie, there is no case to stay the decree under appeal as defendants failed to lead evidence in support of their defence. They were granted sufficient opportunity which they failed to take. As such relying upon evidence lead by the plaintiff, the decree has been passed.

5. Having considered submissions advanced, apparently, the substantive appeal filed by the present appellant against judgment and decree dated 04.05.2022 passed in Special Civil Suit No.77/2012 is pending before the learned District Judge, Nanded. The decree pertains to the rights in the immovable

property. Admittedly, the execution of the decree is now press into service. In case, such decree is executed, the substantive appeal filed by the plaintiff would rendered practically infructuous.

6. It is true that in every appeal, the stay cannot be granted as of right but as can be observed from grounds of appeal, the defendants are coming with a case that they are not given sufficient opportunity to lead evidence in pursuance to their defence. Mr. Patnurkar takes this Court through the certain documents to contend that there was previous partition and rights of the parties were already crystallized by their voluntary act.

7. Be that as it may, the issue is as to the merit of the case would be decided at the time of final disposal of the appeal but it is always advisable that in case of pendency of substantive appeal, which is continuation of the proceeding in suit, the *status quo* as regards to the suit properties shall be maintained. At the most, the parties can be directed to co-operate for early disposal of the appeal by maintaining *status-quo* as regards to the properties.

8. Learned District Judge has practically rendered findings on the merit of the case instead of considering the object and purport of the application for stay. Such an order cannot be sustained in law. In result, appeal succeeds. Hence, following order is passed.

ORDER

- i. Appeal From Order is allowed.
- ii. The impugned order dated 25.01.2024 passed below Exh.5 in Regular Civil Appeal No.85/2022 is hereby quashed and set aside.
- iii. Pending hearing and final disposal of Regular Civil Appeal No.85 of 2022, the judgment and decree dated 04.05.2022 passed in Special Civil Suit No.77/2012 is hereby stayed.
- iv. The hearing of the appeal is expedited. The learned District Judge shall endeavour to finally decide the appeal after hearing the parties within period of one year from today.
- v. Parties shall co-operate. Appeal From Order stands disposed of. Pending civil application, if any, also stands disposed of.

(S. G. CHAPALGAONKAR, J.)