



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO. 7690 OF 2020

KISAN BHASU RATHOD AND ANOTHER

VERSUS

CHAPALA TEJA PAWAR DIEAD THR LRS SUKHDEV CHAPLA PAWAR AND
OTHERS

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Advocate for the Petitioners : Mr. B. S. Kudale,
Advocate for Respondent Nos.1(1), 1(3) and 2 : Mr. S. V. Jadhwar

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CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 02.04.2025

PER COURT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. Heard Mr. B. S. Kudale, learned Advocate for the petitioners and Mr. S. V. Jadhavar, learned Advocate for respondent Nos.1(1), 1(3) and 2.
3. The petitioners have challenged order dated 28.09.2020, passed by the District Judge-1 Majalgaon on an application for stay (Exh-5) in Regular Civil Appeal No. 2 of 2020.
4. By the impugned order, the First Appellate Court has rejected the

application for stay filed by the petitioners (original defendants) seeking stay to the judgment and decree dated 01.01.2020 in Regular Civil Suit No.185 of 1977. By the impugned order, the Court of District Judge had observed that the issue of possession over the suit property was decided by judgment and order dated 25.03.1972 in Regular Civil Suit No.49 of 1970 pursuant to which an execution case bearing R.D. No.45 of 1974 was filed and the possession was handed over to respondent Nos.1 to 3 through Court bailiff by issuing possession receipt dated 13.06.1974. The First Appellate Court has observed that the issue about the tenancy of the defendants was decided by the Tahsildar, Majalgaon. By referring to the issue of tenancy and the findings of the Trial Court, the First Appellate Court has rejected the application for stay.

5. Raising challenge to the impugned order, Mr. Kudale, learned counsel for the petitioners vehemently submits that the Court has failed to consider the vital issue about long standing possession of the petitioners over the suit property. He submits that the petitioners are tenants of the property and the issue of their tenancy has not attained finality. He submits that the Tahsildar and the SDO have wrongly decided issue of tenancy and an appeal challenging their orders is filed on 10.01.2020 before the Collector, Beed. He submits that since the appeal is pending, the issue of tenancy has not attained

finality. He further submits that during the pendency of the application for stay (Exh-5), the Appellate Court has passed an order dated 23.07.2020 on an application for grant of *status quo* during the pendency of the application for stay (Exh-5) and the said application was allowed and parties were directed to maintain *status quo* till decision on Exh-5. He submits that after decision on Exh-5 (impugned order), this Court has passed an order dated 23.11.2020 and the *status quo* was ordered to be maintained which is continued till today. He therefore requests that the *status quo* may be continued and Regular Civil Appeal No.2 of 2020 may be directed to be expeditiously decided on merits.

6. As against this, Mr. Jadhwar, learned counsel for the respondents strongly opposes the petition. He submits that the impugned order is passed by considering the findings recorded by the Trial Court in Regular Civil Suit No.185 of 1977. He invites attention to the issues framed by the Trial Court in Regular Civil Suit No.185 of 1977 and submits that the issues of title and possession have been answered in favour of the plaintiffs(respondents). He submits that the respondents are having possession over the suit property which they have received in the execution proceedings bearing R. D. No.45 of 1974 which was an execution case of judgment in Regular Civil Suit No.49 of

1970. He submits that there are clear findings by the Trial Court that the defendants (petitioners) are not in a possession of the suit property. He further submits that the issue of tenancy was decided by the Competent Authority against the defendants which is upheld by the Sub-Divisional Officer. He also submits that, although an appeal is pending before the Collector, however, there is no interim relief of any nature. He submits that the impugned order is an order on an application for stay wherein only relief prayed is for stay to the execution of the judgment and decree passed by the Trial Court and no specific injunction against any particular party is sought for.

7. The rival contentions now fall for my consideration.

8. The petitioners have challenged the order passed on an application for stay (Exh-5) in Regular Civil appeal No.2 of 2020. By way of this application, the petitioners/appellants have prayed for the following relief :

“In the interest of justice the operation and execution of the judgment and decree challenged in appeal may kindly be set-aside till disposal of the appeal and record and proceeding be called from lower court.”

It is pertinent to note that, although, the only relief prayed by this application

is to set aside the impugned judgment and decree till disposal of the appeal. The learned Advocate for the petitioners submits that this includes the prayer for injunction. Be that as it may, the application for stay was considered by the Appellate Court as an application for injunction. The basic contention of the respondents (original plaintiffs) before the Trial Court was that on the basis of sale deed of the year 1968, Regular Civil Suit No.49 of 1970 was decreed and in the execution case, the respondents were put in possession of the suit property through the Court bailiff. However, it has to be noted that the name of the respondents were not recorded in the 7/12 extract of the suit property. The contention of the learned Advocate for the petitioners is that the petitioner was not a party in the said civil suit (R.C.S. No.49/1970) and therefore no rights can be claimed against him based on the decree in that suit. It has to be noted that the judgment and decree in Regular Civil Suit No.49 of 1970 was confirmed by the District Court as well as by the High Court in which the petitioners were not parties.

9. True it is, after considering the evidence on record, the Trial Court has recorded findings with respect to the title and possession over the suit property. The appeal challenging the judgment and decree is pending and the only issue raised vide application for stay was for grant of stay to the

impugned judgment and decree, during the pendency of the appeal.

10. It has to be noted that the issue about tenancy of the defendants in R.C.S. No.185/1977 is pending before the Collector, Beed. The petitioners/appellants are claiming that they are having the possession of the suit property since 1958 and they have purchased the property on 11.06.1966. Although, the Trial Court has decided the issue of title, however, 7/12 extract shows the name of the petitioners/appellants. The petitioners/appellants have raised several grounds in the appeal memo and by order dated 23.07.2020, parties were directed to maintain *status quo*. Thereafter, by order dated 23.11.2020, in this petition, parties were directed to maintain *status quo* which is continued from time to time and it is operating till today.

11. In view of the fact that the Regular Civil Appeal is of the year 2020 and the same is pending only because of the pendency of the instant petition, it will be in the interest of justice that the Regular Civil Appeal is directed to be decided finally at the earliest. The petitioners submit that their appeal with respect to tenancy rights is also pending before the Collector since 2020 and the decision of the appeal will decide their status. The petitioners are asserting that they are tenants and desirous of pursuing their appeal

before the Collector at the earliest. The petitioners are therefore directed to get their appeal decided expeditiously and the decision may be placed before the Appellate Court.

12. It has to be noted that the petitioners (original defendants) are claiming rights based on their Sale Deed of the year 1966 and the 7/12 extract shows the name of the petitioners. The Regular Civil Appeal needs to be decided by considering rival claims and decision on merits is desirable, as the parties are involved in the litigations since decades. Since order of *status quo* was operating during the pendency of application for stay and further this Court had also granted *status quo*, which is continued from time to time since last several years, interest of justice will be subserved if the Regular Civil Appeal is directed to be decided expeditiously.

13. Considering the above mentioned facts and circumstances, I pass following order to meet ends of justice :

ORDER

- i. The writ petition is allowed.
- ii. The impugned order dated 28.09.2020 passed by the District

Judge-1, Majalgaon, is quashed and set aside and the application for stay in R.C.A. No.02/2020 is allowed.

iii. The Appellate Court is directed to decide the Regular Civil Appeal No.2 of 2020 as early as possible and preferably within a period of four (04) months from the date of receipt of this order.

iv. The petitioners are directed to meticulously appear before the Appellate Court on 21st April 2025 and take steps for early decision of the appeal without seeking adjournments.

v. The writ petition is disposed of.

(PRAFULLA S. KHUBALKAR, J.)