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IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL APPLICATION NO.49/2024
IN
SECOND APPEAL NO.28/2024**

MARIA ADELAIDE PEREIRA & ANR. ... APPLICANTS

Versus

PETER SAVIO LOURENCO
REPRESENTED BY HIS ATTORNEY
JAINITA MADKAIKAR E LOURENCO
& ANR. ... RESPONDENTS

Mr S. Redkar with Mr K. Desai, Advocates for the Applicants.
Mr J. J. Mulgaonkar, Advocate for Respondent No.2.

**WITH
SECOND APPEAL NO.1778/2024 (F)**

PETER SAVIO LOURENCA
REPRESENTED BY HIS
ATTORNEY JANITA
MADKAIKAR E LAURENCO & ANR. ... APPELLANTS

Versus

MARIA ADELAIDE
PEREIRA AND ANR. ... RESPONDENTS

Mr J. J. Mulgaonkar, Advocate for the Appellants.
Mr S. Redkar with Mr K. Desai, Advocates for the Respondents.

CORAM: M. S. KARNIK, J.

DATED: 7th FEBRUARY 2025

P.C. :

1. Heard Mr S. Redkar, learned counsel for the applicants in Civil Application No.49/2024. This is an application for stay of

Judgment and Decree dated 07.11.2023 passed by the Appellate Court. The appeal by the plaintiff as well as the appeal by the defendant is admitted.

2. The original defendant has filed this application seeking stay of the execution and implementation of the decree. By the said decree the First Appellate Court has directed the appellants to hand over a portion of the land to the plaintiff which according to the findings of the Appellate Court is the encroached portion. Since the appeal has been admitted and as the appellants are in possession, I am inclined to stay the Judgment and Decree so far as the alleged encroached portion in respect of which the appellants are in possession. Learned counsel for the appellants on instructions submitted that an undertaking will be filed within a period of one week from today stating that there shall be no further encroachment and they will restrict their possession to the portion in respect of which the decree is made. The statement is accepted.

3. Further, the learned counsel for the respondent/original plaintiff submits that as now there is a decree in favour of the plaintiff, if the appellants want to continue in possession they must pay suitable compensation in view of the decision of the Supreme Court in *Atmaram Properties (P) Ltd. v/s. Federal Motors (P) Ltd. - (2005) 1 SCC 705*.

4. Taking an overall view of the matter, in my opinion, the interest of justice will be served if the appellants are called upon and in fact the learned counsel for the appellants on instructions

submitted that the appellants are willing to deposit a sum of Rs.5,000/- per month in this Court commencing from 07.11.2023. Subject to such undertaking filed and deposit being made, the impugned Judgment and Decree to the extent the appellants are in possession is stayed.

5. The appellants to deposit the amount regularly. The arrears to be deposited within a period of four weeks from today.

6. Civil Application No.49/2024 is disposed of in the above terms.

M. S. KARNIK, J.