



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

982 WRIT PETITION NO. 957 OF 2026

SANJAY KACHARU NIMBALKAR AND OTHERS
VERSUS
RAJENDRA BABURAO KHAIRE AND OTHERS

...

Mr. Sandip R. Sapkal, Advocate for the Petitioners

Mr. D. R. Jayabhar, Advocate for Respondent Nos.1 to 18.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 28th JANUARY, 2026

P C. :-

1. The Petitioners impugn order dated 15.12.2025 passed by District Judge-1, Newasa in Regular Civil Appeal No. 31 of 2025 below Exhibit 5 by which judgment and decree passed by learned Civil Judge, Senior Division, Newasa in Regular Civil Suit No. 89 of 2020 has been stayed.

2. The Petitioners herein are Plaintiffs in Regular Civil Suit No. 89 of 2020, which was decreed by Trial Court. The Trial Court after recording evidence of parties, decreed suit vide judgment and order dated 09.05.2025. Aggrieved, Defendants filed Regular Civil Appeal No. 31 of 2025 before District Judge, Newasa. Along with appeal, they filed an application below Exhibit 5, seeking stay on the execution of judgment and decree passed in Regular Civil Suit No. 89 of 2020. The Appellate Court allowed application

and stayed execution of decree by impugned order dated 15.12.2025.

3. Mr. Sandip Sapkal, learned Advocate appearing for Petitioners, would submit that Appellate Court recorded erroneous reasons while entertaining application for grant of stay. According to him, observations of Court that Petitioners had an alternate efficacious remedy to seek measurement of lands and therefore, direction by Trial Court in form of mandatory injunction, directing T.I.L.R. to measure Plaintiffs land cannot be countenanced. Mr. Sapkal, relying of exposition of law by Supreme Court of India in case of *E. Achuthan Nair Versus P. Narayanan Nair, 1987 AIR(SC) 2137*, submits that suit for demarcation of boundary separating adjacent lands of different owners is maintainable. As such, issue is no more res integra.

4. Apparently, Defendants are aggrieved by decree passed by Trial Court, whereby directions were given for appointment of Taluka Inspector of Land Records to measure land and fix boundaries of respective parties. The issues which were framed in suit show that various disputed points have been considered and decided by Trial Court. The issue regarding ownership, encroachment and rights of parties over suit property have been dealt and decided to certain extent in trial.

5. In that view of matter, it would be for Appellate Court to consider

all objections raised in substantive Appeal by Respondents. As long as substantive Appeal against Trial Courts decree is pending, it is imperative that execution of decree is stayed.

6. In that view of matter, this Court do not find any reason to entertain Writ Petition against order impugned. However, in the facts of case, it would be appropriate for learned District Judge to endeavour to decide pending appeal expeditiously. Hence, Writ Petition stands rejected. Parties to co-operate for expeditious disposal of appeal.

(S. G. CHAPALGAONKAR, J.)

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