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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2727 OF 2015

Suryakant Baburao Sidankar & Others

PETITIONERS

VERSUS

Sanjay Chandrakant Sidankar & others

RESPONDENTS

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Mr. P. R. Katneshwarkar, Advocate for the petitioners

Mr. S. P. Shah, Advocate for respondents No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 24th JUNE, 2015

ORDER :

1. Learned advocate for the petitioners, on instructions, confines scope of challenge to the order dated 10th December, 2014 in Miscellaneous Civil Appeal No. 149 of 2014, to an area of land under construction since the property, now bearing gut No. 2438 referred to in the prayer under Exhibit-50, is encumbered by a loan for the construction taking place over the same. It is further being referred to that the construction is going on over a small area and it is a very small fraction of the disputed properties involved in the suit.

2. I have heard learned advocates for the parties for quite

some time. The petitioners state that they would file a solemn undertaking that in the event the plaintiff succeeds in the suit, they would not claim equities in respect of the constructed property.

3. Learned advocate for respondent No.1, though has reservations about the same, however he is not in a position to dispute the position that the construction is going on over a property, which is only a fraction of the disputed properties. He further is not in a position to dispute that loan has been raised for construction by the petitioners.

4. Having regard to aforesaid, I deem it appropriate that the situation can be resolved by directing the petitioners to file an undertaking to this court to the effect that in case the suit is ultimately decided in favour of the plaintiffs, petitioners would not claim any equities in respect of the constructed property and the same would be liable to be considered while division of shares takes place among the parties. Such an undertaking shall be filed by the petitioners to this court and then only the petitioners shall resume the construction. Undertaking to aforesaid effect shall be filed within a period of two weeks from today. It is further made clear that the injunction clamped

against the petitioners stands abated only to the extent as aforesaid and no further. This concession is given only because the construction has already commenced and has reached to a certain level and loan is raised.

5. Writ petition as such, with aforesaid directions, stands disposed of. It is further made clear that aforesaid order shall not be construed to be an order on merits and shall not influence decision on merits. Learned advocate for the petitioners further requests for expeditious disposal of the suit. The trial court may consider request of the petitioners for expeditious disposal.

[SUNIL P. DESHMUKH, J.]