

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1440 OF 2012

RAJDEEP S/O DINDAYAL AGRAWAL
AND OTHERS

PETITIONERS

VERSUS

PANDHARI S/O SAMBHA TIGILE
AND OTHERS

RESPONDENTS

Mr.M.S.Deshpande, Advocate for the petitioners.
Mr.T.M.Venjane, Advocate for respondent No.1.
Mr.S.V.Natu, Advocate for respondent Nos. 2 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/01/2015

PER COURT :

1. The submissions of the learned Advocate for the petitioners are as follows :-

- (a) The petitioners had preferred RCS No.510/1987, seeking perpetual injunction against the respondents.
- (b) By judgment dated 07/12/2001, RCS No.510/1987 was dismissed.
- (c) The petitioners preferred R.C.A.No.10/2002, which was partly allowed by judgment and order dated 16/02/2004.
- (d) The respondents preferred a Second Appeal No.850/2004 before this Court, which was dismissed on 03/09/2004.
- (e) The Special Leave Petition No.7083/2005 filed by the respondents is said to be still pending before the Hon'ble Apex Court.
- (f) There is no interim relief granted by the Apex Court to the

respondents in the said Special Leave Petition.

- (g) In the meanwhile, the petitioners filed Reg.Dkt.No.72/2009, seeking execution of the decree dated 16/02/2004 in the light of the construction allegedly erected by the respondents.
- (h) Reg.Dkt.No.72/2009 was dismissed by judgment and order dated 17/03/2011, thereby concluding that the petitioners / decree holders could not establish that the judgment debtors had erected the construction.
- (i) Subsequent thereto, as per the statement of the petitioners, the said construction is demolished and the petitioners, for the present, have no cause of action surviving against the respondents.
- (j) This petition be disposed of in the light of the statement recorded as above and any subsequent event, if prejudicial to the interest of the petitioners, would be questioned as a fresh cause of action.

2. Learned Advocates for the respondents submit that the petition can be disposed of in the light of the statement of the petitioners, which is to be restricted to the cause of action in connection with Reg.Dkt.No.72/2009. Any other grievance of the petitioners, which may involve the interest of the respondents, shall be dealt with by the respondents as and when such a litigation may arise.

3. In the light of the statement made by the petitioners, this petition, which assails the judgment dated 17/03/2011 in

Reg.Dkt.No.72/2009 is dismissed, as being infructuous..

4. Needless to state, any cause of action beyond the impugned judgment has not been dealt with by this Court.

(RAVINDRA V. GHUGE, J.)