

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.1767 OF 2013

Bapu Ganpati Koli	.. Petitioner
Vs.	
Rayat Shikshan Sanstha	.. Respondent

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Mr.Y.R. Mankapure, Advocate for the Petitioner.
Mr.Prashant P. Raul a/w. Mr.S.P. Kadam, Advocate for Respondent.
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CORAM : A.P. BHANGALE, J.

DATED : MARCH 20, 2015.

P.C. :

Rule. Heard by consent.

2 The Petitioner (original plaintiff) in a pending Miscellaneous Civil Appeal No. 177 of 2012 in the Court of Civil Judge, Junior Division, Miraj questioned the interim order passed by the trial Court whereby a temporary injunction granted by the trial Court pursuant to order below Exhibit-5 was set aside and the interim relief granted by the trial Court was rejected. The dispute appears between the petitioner/plaintiff and the New English School, Erandoli, Taluka Miraj, District Sangli, managed by Rayat Shikshan Sanstha.

The dispute is in respect of area claimed by the plaintiff and area claimed by the defendant school, as according to the plaintiff, the defendant school had proceeded to construct compound wall in the area which was used by villagers, as pathway. The grievance of the plaintiff is that no measurements were carried out by Taluka or District Inspector of Land Records before the compound wall was constructed preventing the villagers from using the pathway. This statement is made at the bar that after the Appeal was allowed and interim injunction order was set aside, the compound wall was constructed by the school. In the affidavit filed by the Principal Dr.Arvind Sahebrao Burungale on behalf of the defendant school, it is mentioned that the writ petition became infructuous as the compound wall of the school from the side of the petitioner's land is already complete, and nothing remains qua prayers made in Exhibit-5 application in the pending suit. Thus, since the Appeal was allowed and interim injunction was thereby refused by the Appellate Court setting aside the interim injunction order passed by the trial Court, circumstances have undergone a change whereby compound wall is constructed. The remedy of the plaintiff therefore is to go before the trial Court and to press final prayers in the suit by leading necessary evidence in the suit. I am also informed that Taluka Inspector of Land Records carried out measurements in respect of the disputed land and

submitted report in the trial Court. That being so, the learned trial Judge who is in seisin of the case can frame relevant issues, as pleadings are reportedly complete in the pending suit, and after giving opportunity to the parties to lead their respective evidence, the learned trial Judge can dispose of the pending suit, on merits expeditiously and finally in respect of real controversy between the parties. Learned trial Judge may consider grant of compensation as well, if according to it construction by the school was carried out by encroaching upon the land of the plaintiff or the land used by the villagers, as path way. This would, of course, depend upon evidence led in the suit. Since trial Court ought to be enabled to dispose of the suit on its own merits and in accordance with law, as early as possible, no useful purpose will be served by keeping the writ petition pending in this Court.

3 Hence, writ petition is disposed of with a direction to the trial Court to hear the parties on merits and to decide the suit, as expeditiously as possible.

4 Parties are directed to appear before the trial Court on 30th April, 2015. Rule is discharged accordingly.

5 Suffice to say that learned trial Judge to decide the Suit uninfluenced by the interim orders passed in the Suit and Appeal earlier.

(A.P. BHANGALE, J.)