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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6546 OF 2015

Shri Ashoksinh Hanmant Ghorpade .. Petitioner

Vs.

Shri Dattatraya Maruti Ghorpade and others .. Respondents

Mr.N.V. Bandiwadekar, Advocate for the Petitioner.

Mr.V.S.Talkute, Advocate for Respondents No. 1, 2 & 4.

CORAM : R. G. KETKAR, J.

DATE : 30th JULY, 2015

P.C. :

. Heard Mr.N.V. Bandiwadekar, learned Counsel for the petitioner and Mr.V.S.Talkute, learned Counsel for respondents No. 1, 2 & 4 at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged judgment and order dated 07/01/2015 passed by the learned 2nd Joint Civil Judge, Senior Division, Satara below Exhibit 5 in Regular Civil Suit No. 627 of 2014 as also judgment and order dated 19/06/2015 by the learned District Judge -6 Satara in Misc. Civil Appeal No. 28 of 2015. By these orders, the Courts below partly allowed application Exhibit 5 for injunction filed by the petitioner, hereinafter referred to as plaintiff, restraining respondents No. 1, 2 & 4 from cutting trees in

the suit property, more particularly described in paragraphs 1 & 1A of the plaint. The Courts below held that construction carried out by respondents No.1, 2 & 4 will be subject to outcome of the Suit as also in case the Suit is decided against them, they will demolish the construction carried out by them by giving undertaking to that effect.

3. After hearing learned Counsel for the parties as also having regard to the fact that construction carried out by respondents No. 1, 2 & 4 has substantially progressed, I do not find that this is a appropriate case for invoking powers under Article 227 of the Constitution of India. Mr.Talkute submits that respondent No.1 is present in the Court. He states that in pursuance of the trial Court's order, respondents No. 1, 2 & 4 have given undertaking in the trial Court. Mr.Bandiwadekar submits that the undertaking is not in the form of affidavit and is given on a pursis. Mr.Talkute submits that within 2 weeks from today, respondents No.1, 2 & 4 will file duly affirmed undertaking in the trial Court in the following terms.

- i) The construction carried out by respondents No. 1, 2 & 4 shall be subject to the final outcome of the Suit.
- ii) In case the Suit is ultimately decided against respondents No. 1, 2 & 4, they will demolish the construction at their costs without claiming any equity.

iii) If such undertaking is filed, the trial Court shall accept the said undertaking.

4. Subject to above, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)