

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.871 OF 2015

Manojkumar Parasnath Maurya and ors.      ...      Petitioners  
Vs.  
Amarnath Doodhnath Maurya      ...      Respondent

Mr. S. P. Pandey for Petitioners.  
Mr. Amit Gharte i/b. Mr. J. D. Khairnar for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : 9<sup>TH</sup> JUNE, 2015**

**P.C. :**

Heard Mr. Pandey, learned Counsel for petitioners and Mr. Gharte, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 31.10.2014 below exhibit-5 passed by the learned 4<sup>th</sup> Joint Civil Judge, Junior Division, Malegaon in Regular Civil Suit No.333 of 2014 as also the judgment and order dated 20.12.2014 passed by the learned Ad-hoc District Judge-1, Malegaon, District Nashik in Miscellaneous Civil Appeal No.44 of 2014. By these orders, the Courts below allowed the application at exhibit-5 taken out by the respondent and restrained the petitioners temporarily from causing obstruction to the plaintiff-respondent in using common staircase, toilet, bathroom and northern half portion of the terrace. The Courts below also restrained the petitioners from causing any damage to the electric connection, water tank and other articles belonging to the respondent.

3. In support of this Petition, Mr. Pandey strenuously submitted that Courts below committed serious error in allowing the application. He

submitted that northern half portion of ground floor was allotted to the respondent and southern half portion of ground floor was allotted to Rajnath. The entire area of first floor was allotted to the petitioners. He submitted that the Courts below did not properly consider the mutation entry No.41003, which substantiates the case of the petitioners.

4. On the other hand Mr. Gharte submitted that though the petitioners relied on partition deed dated 16.08.2003, they did not produce the copy thereof. As against this, respondent produced partition deed dated 26.08.2003. The Courts below, after considering the material on record, prima facie, held that father of the plaintiff and grandfather of the defendants have effected the partition as per the partition deed dated 26.08.2003 and certainly the plaintiff is having right to put his water tank on the northern portion of terrace and obtain the electric connection to his restaurant. Even if it is assumed that there is no partition, still the respondent has right to enjoy each and every portion of the building.

5. The Courts below, after considering the material on record, have concurrently held that respondent has made out a prima facie case and that the balance of convenience also lies in his favour for granting him interim relief and that irreparable loss would cause to the respondent, if the application is rejected. Mr. Pandey was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of evidence on record, no reasonable person could have come to that conclusion.

6. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed.

**(R. G. KETKAR, J.)**