

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

WRIT PETITION NO.3446 OF 2015

Shreemati Suman Rumaji Darekar and another .. Petitioners

Versus

Shree Mahadev Ramchandra Darekar and others .. Respondents

Mr. Saurabh Butala i/by Mr. H. A. Sathe, for the Petitioners.

Mr. B. K. Raje, for the Respondent Nos.1 to 6.

CORAM : R.M. SAVANT, J.

DATE : 20th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 22.01.2015 passed by the Learned District Judge-1, Mangaon, by which order the Appeal filed by the Respondent Nos.1 to 6 i.e. the original Plaintiffs came to be allowed and resultantly, the order dated 03.12.2013 passed by the Trial Court i.e. the Learned Civil Judge, Junior Division, Mahad came to be set aside and in turn, the Application Exh.5 came to be allowed. The Lower Appellate Court has thereby granted injunction to the extent mentioned in clause 3 of the operative part of the impugned order thereby directing the Defendants to maintain status-quo in respect of the property mentioned in the said clause 3 of the operative part. In so far as the Trial Court is concerned, the Trial Court did not deem

it appropriate to exercise discretion in favour of the Plaintiffs as according to the Trial Court the Plaintiffs failed to prove that the Defendants were carrying out construction in the 3 Ares of land which are owned by the Plaintiffs. The 3 Ares of land are owned by the Plaintiffs in Survey No.37/1A/5. The Defendants i.e. Petitioners herein own 10 Hectors 27 Ares 50 p. in Survey No.37/1A/2. The Trial Court has further observed that having regard to the relief sought by the Plaintiffs in the suit in question, it was necessary on the part of the Plaintiffs to file an application for appointment of the Court Commissioner to identify as to whether the construction is on the land of the Defendants and whether the Defendants have encroached upon the land of the Plaintiffs admeasuring 3 Ares. However, the Lower Appellate Court has observed that to avoid multiplicity of proceedings as also to see to it that an irreversible situation is not reached that the Defendants are required to be directed to maintain status-quo though they have completed the construction. The factum of the construction being complete is accepted both by the Trial Court and the Lower Appellate Court.

2. The Learned Counsel appearing on behalf of the original Plaintiffs Mr. B. K. Raje would submit that the only anxiety of the Plaintiffs is that the Defendants i.e. the Petitioners herein would put up additional construction to the construction already put up and it is with the said

apprehension that the Plaintiffs were pursuing the application for temporary injunction. The Learned Counsel for the Respondents fairly submitted that the Plaintiffs have no objection if the Defendants occupy the constructed house subject to the result of the suit. However, they should not put up additional construction on the disputed site.

3. Upon this, the Learned Counsel Mr. Saurabh Butala submitted that in view of the injunction granted by the Lower Appellate Court, the Defendants are not able to use house in question which is already complete in view of the fact that the MSEDCL is not providing the electricity connection as the names of the Defendants are not appearing in the Gram Panchayat record. The Learned Counsel however assures the Court that the Defendants would not carry out any additional construction on the site in question. In my view, in the light of the submissions, interest of justice would be served if the following directions are issued :-

I) Without prejudice to the rights and contentions of the parties, the Gram Panchayat Kondhavi, Taluka Poladpur, District Raigad is directed to provisionally enter the names of the Defendant Nos.1 and 2 in the Gram Panchayat record and issue a provisional certificate to the said effect. However, the same would be subject to the result of the suit. If the Plaintiffs succeed in the suit, then the necessary correction would have to be carried out by the Gram Panchayat in the record.

II) The Defendant Nos.1 and 2 would be entitled to apply to the MSEDCL for the electricity connection. The grant of electricity connection would be subject to the decision in the suit as regards the issue as to whether the house is standing in the property of the Defendants or the Plaintiffs.

III) The instant order would substitute the impugned order dated 22.01.2015 and would operate pending the hearing and final disposal of the suit.

IV) In the facts and circumstances of the case, the hearing of the RCS Suit No.57 of 2013 is expedited.

V) The statement of the Learned Counsel for the Petitioners that the Defendants would not further construct and add to the construction which is already existing on the dispute site is accepted as an undertaking to this Court. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]