

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

**WRIT PETITION NO.6258 OF 2014**

**Dhondiram Tukaram Gote and anr. : Petitioners.**  
**Versus**  
**Gundappa Tukaram Gote and anr. : Respondents.**

**Mr. Rajesh B Parab for the Petitioners.**  
**Mr. Chetan G Patil for the Respondent Nos.1 and 2**

**CORAM : R. M. SAVANT, J.**  
**DATE : 10<sup>th</sup> February 2015**

**P.C.**

1           The writ jurisdiction of this court is invoked against the order dated 10/4/2014 passed by the learned Ad-hoc District Judge-3, Kolhapur by which order the Appeal filed by the Defendants being Misc. Civil Appeal No.64 of 2013 came to be dismissed and resultantly the order dated 7/2/2013 passed by the learned Civil Judge, Junior Division, Kagal allowing the Application (Exhibit 5) in Regular Civil Suit No.285 of 2012 came to be confirmed.

2           The Respondent Nos.1 and 2 are the original Plaintiffs who have filed the suit in question for permanent injunction restraining the Defendants from interfering with the Plaintiffs' possession in respect of the property bearing Grampanchayat (for short "GP") No.45/1/C and the property bearing GP No.502. It is required to be noted that the said two properties are standing in the name of the Plaintiff Nos.1 and 2. In so far as the Defendant No.1 is

concerned, it is the property bearing GP No.45/1/A which is the property of the Defendant No.1.

3           The bone of contention is therefore the said three properties and especially the property bearing GP No.502. In so far as the Defendants are concerned, it is their case that the property bearing Grampanchayat GP No.502 is concerned, it is an adjunct to the property bearing GP No.45/1/A being an open space of the said property. The parties placed material before the Courts below in respect of their respective assertions.

4           The Courts below on the basis of the assessment extracts of two years i.e. 2011-2012 and 2012-2013 and the discrepancies in the area of the property bearing GP No.45/1/A came to be a conclusion that the case of the Defendants that the said property is an adjunct to the property bearing GP No.45/1/A could not be accepted. The Courts below have observed that how the area of the said property bearing GP No.45/1/A increased after the sale deed was executed by the Defendant No.1 in favour of the Defendant No.2 has not been explained by the Defendants. Both the Courts below have therefore recorded a finding of fact that it is the Plaintiffs who are in possession and that the Plaintiffs have satisfied the pre-requisites for the exercise of the discretion by the Courts below in the matter of grant of temporary injunction. In the light of the concurrent orders passed by the Courts below, no case for interdiction in

the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**