

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

WRIT PETITION (STAMP) NO.16169 OF 2015

Shri. Anandrao Rangrao Nimbalkar and others .. Petitioners

Versus

Shri. Nagnath Bhau Bagal and another .. Respondents

Mr. R. B. Nalavade, for the Petitioners.

Mr. D. D. Rananaware, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 07th SEPTEMBER, 2015

PC.

1. There is a concurrent finding recorded in favour of the Respondents and against the Petitioners. Both the Courts below have on the basis of the material on record have held that the discretion could be exercised in favour of the Respondents who are the original Plaintiffs. The bone of contention in the proceedings is the Well in Gat No.1035/A of village Vetane, Taluka Khatav, District Satara. The instant suit being Regular Suit No.103 of 2011 was filed in view of the interference by the Petitioner/original Defendants in the right of the Plaintiffs in respect of the Well and the act of the Defendants to remove the electric pole and the electricity motor which was allegedly installed by the Plaintiffs on the said Well. The instant suit has been preceded by Regular Civil Suit No.196 of

1991 which was filed by the father of the present Petitioners against the father of the present Respondents. The said suit partly came to be decreed however the right of the present Respondents who are the Defendants in the said suit in respect of the Well in question was recognized. It seems that against the decree passed in the said suit, the present Petitioners filed an Appeal. In the said Appeal, the suit itself came to be dismissed. In the instant suit, the present Respondents filed an application for temporary injunction as also for a mandatory order to direct the Defendants i.e. Petitioners herein to reinstall the electric pole and electric motor which they had removed. The said applications Exh.5 for temporary injunction and Exh.40 for the mandatory order for re-installation of the electric pole and electric motor. The Trial Court having regard to the antecedent litigation between the parties wherein the right of the present Plaintiffs in respect of the pump recognized, allowed both the applications Exh.5 and Exh.40 and directed the Defendants to reinstall the electric pole and electricity motor.

2. The Defendants aggrieved by the order passed by the Trial Court filed Misc. Civil Appeal No.20 of 2012. In the said Misc. Civil Appeal initially an order of status-quo was passed by the Lower Appellate Court but thereafter the Lower Appellate Court has by the impugned judgment and order dated 16.04.2015 confirmed the order passed by the Trial Court

and dismissed the Appeal. The Lower Appellate Court has adverted to the antecedent litigation between the two parties in form of Regular Civil Suit No.196 of 1991. The Lower Appellate Court has also considered the revenue record in respect of the property in question. The Lower Appellate Court was of the view that the Trial Court has granted injunction after taking into consideration all the relevant material that was placed on record. In my view, having regard to the concurrent orders passed by the Courts below and especially when the Courts below have relied upon the antecedent adjudication which took place between the parties, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. However, the hearing of the suit is expedited.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.