

Ms Neeta Karnik for Petitioners.
Mr. P. M. Arjunwadkar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 12, 2016

Heard Ms Karnik, learned Counsel for petitioners and Mr. Arjunwadkar, learned Counsel for respondents at length. Rule. Mr. Arjunwadkar waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 17.12.2015 passed by the learned Joint Civil Judge, Junior Division, Palghar below exhibits 5 and 32 in Regular Civil Suit No.171 of 2015 as also the judgment and order dated 13.01.2016 passed by the learned District Judge-1, Palghar in Miscellaneous Civil Appeal No.75 of 2015. By these orders, the Courts below partly allowed application exhibit-5 filed by the respondents, hereinafter referred to as plaintiffs and rejected the application exhibit-32 filed by the petitioners, hereinafter referred to as defendants. The Courts below issued injunction restraining defendants from causing obstruction to the plaintiffs' possession over Survey No.827/5 situate at Village Mahim, Taluka and District Palghar (for short 'suit property') as also obstructing plaintiffs from constructing

compound wall on the Southern and Western boundaries of the suit property.

3. Plaintiffs instituted Suit inter alia praying for perpetual injunction restraining defendants from obstructing their possession over the suit property as also restraining defendants from prohibiting the plaintiffs from carrying out construction of compound wall on the Western and Southern boundaries of the suit property as also restraining the defendants from entering into the suit property, damaging the compound wall, changing the nature of the compound wall, among other prayers. During the pendency of the Suit, plaintiffs took out application exhibit-5 praying for temporary injunction on the aforesaid lines. Defendants filed application exhibit-32 inter alia praying for injunction restraining the plaintiffs from obstructing their possession over Survey No.827/4 and 827/8; restraining the plaintiffs from obstructing the defendants from entering upon and using the road passing through the suit property as also restraining the plaintiffs from constructing the compound wall on the Northern boundary of the suit property. The Courts below partly allowed the application exhibit-5 and rejected application exhibit-32 filed by the defendants. It is against these decisions, original defendants have instituted this Petition.

4. Ms Karnik has taken me through the prayers made in exhibit-5 as also in exhibit-32. She submitted that defendants have easementary rights for passing through the road in the suit property. She has invited my attention to recitals in the sale deed dated 20.02.2008 executed by Shri Sanjay Yashwant Tare and three others in favour of defendants No.1 and 2, and in particular recital pertaining to easementary rights. She submitted that by virtue of the recitals in the sale deed executed in favour of defendants on 20.02.2008, defendants have right of way

through the suit property. The learned trial Judge committed error in not granting relief in terms of prayer clauses (aa) and (e). If the plaintiffs are permitted to put up compound wall on the Northern boundary of the suit property, their easementary rights of using that road which is passing through the suit property will be affected. She, therefore, submitted that defendants are entitled to reliefs in terms of prayer clauses (aa) and (e) of application at exhibit-32.

5. As far as prayer clause (a) is concerned, the Courts below committed error in rejecting this prayer though undisputedly defendants are owners of Survey No.827/4 and 827/8, without recording any reasons. She, therefore, submitted that the Petition requires consideration.

6. Ms Karnik further submitted that plaintiffs had carried out measurement through T.I.L.R. without giving notice to the adjacent landholders, and defendants have challenged the measurement carried out by the T.I.L.R. and the said proceedings are pending.

7. On the other hand, Mr. Arjunwadkar supported the impugned orders. He submitted that perusal of the sale deed dated 20.02.2008 in favour of the defendants does not show that they have right of way through the suit property. Consequently, defendants are not entitled to any relief in terms of prayer clauses (aa) and (e) of application exhibit-32. As far as prayer clause (a) is concerned, Mr. Arjunwadkar, upon taking instructions from plaintiff No.1 – Mr. Chandrakant Patil and the instructing Advocate Mr. Ramesh Patil, states that plaintiffs will neither disturb nor enter into or commit encroachment in respect of Survey No.827/4 and Survey No.827/8 belonging to the defendants. Statement made by Mr. Arjunwadkar, upon instructions, are recorded.

8. As far as injunction issued in favour of plaintiffs in terms of clause 2 of the operative part of the trial Court's order is concerned, prima facie, defendants have not established that they have right of way through the suit property. It is also not in dispute that plaintiffs are the owners of the Survey No.827/5. If that be so, I do not find that the learned trial Judge has committed any error in issuing injunction in terms of clause 2 of the operative part of the order whereby defendants are restrained from obstructing to the possession of the plaintiffs over the suit property as also causing obstruction from putting up compound wall on the Southern and Western boundaries of the suit property.

9. In view thereof, Petition is disposed of in the following terms:

a. Statements made by Mr. Arjunwadkar, upon instructions, that plaintiffs will neither disturb nor enter into or commit encroachment in respect of Survey No.827/4 and Survey No.827/8 belonging to the defendants are accepted and therefore, application exhibit-32 is partly allowed in terms of prayer clause (a). Subject to that, no case is made out for interfering with the impugned orders.

b. Rule is partly made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)