

[Sequeira

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

*CIVIL APPLICATION NO. 403 OF 2015
Along with
SECOND APPEAL NO. 195 OF 2015*

Shri.Vinodkumar Rameshlal Adwani. ... Applicant / Appellant
V/s.
Shri Gajanan Dadoba Powar & ors. ... Respondents.

Mr.V.S.Gokhale, for Applicant /Appellant
Mr.Chetan Patil, for Respondent No.5.

*Coram : N.M. Jamdar, J.
Tuesday 7 June, 2016.*

P.C. :-

The Civil Application is taken out for order of injunction pending hearing of the Second Appeal against Respondents restraining them from creating third party rights and carrying out any construction in the suit property. Respondent No.5 is the only Respondent admittedly in possession.

2. The Appeal filed by the Respondents challenging the decree of specific performance has been allowed and it is against this order the Applicant has filed an Appeal which is pending. The property is an open plot of land situated within the Kolhapur city. If the property is not put to use it is in danger of being encroached. However, considering the facts

and circumstances, it will be in the interest of justice to put the Respondent No.5 under conditions if the Respondents propose to carry out any construction thereupon.

3. In the circumstances, it is directed that if the Respondents carry out any construction in the suit property, the same shall be subject to the outcome of the Appeal and if the Applicant succeeds in the Second Appeal, the Respondents will hand over the vacant and peaceful possession of the suit property restoring the plot to its original state, and the Respondents will not claim any equities. The Respondent will file an undertaking on affidavit to that effect within period of twelve weeks from today. As far as creating third party rights in the suit property is concerned, the Respondents will not create any third party rights in the suit property as well in respect of the construction if any made, till the disposal of the Appeal.

The Civil Application is accordingly disposed of.

(N.M. Jamdar, J.)