

Mr. Tushar Narayan Sonawane for Petitioners.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 04.01.2016 passed by the learned 4th Joint Civil Judge, Junior Division, Bhiwandi below exhibit-5 in Regular Civil Suit No.932 of 2015 as also the judgment and order dated 12.02.2016 passed by the learned District Judge-10, Thane in Miscellaneous Civil Appeal No.5 of 2016. By these orders, the Courts below dismissed the application made by the petitioners, hereinafter referred to as plaintiffs, for temporary injunction restraining the respondents, hereinafter referred to as defendants, from carrying out any further construction over property bearing Survey No.8/26 situate at Village Kalher, Taluka Bhiwandi, District Thane (for short 'suit property').

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interest. During the pendency of the Suit, plaintiffs took out application exhibit-5 for temporary injunction restraining the defendants from carrying out any further construction over the suit property and / or creating third party interest.

4. Defendant No.1 filed reply. Defendants No.2 to 7 also filed separate reply. By the impugned orders, the Courts below dismissed the application. It is against these decisions, plaintiffs have instituted the present Petition.

5. Mr. Sonawane submitted that on 06.04.2000, legal representatives of Kacher Narayan Tare executed agreement in favour of Govar Tare. The recital in the agreement clearly shows that land admeasuring 30 ft. x 19 ft., namely 570 sq.ft. land was given in possession of said Govar. The boundaries of 30 ft. x 19 ft. were also set out in the agreement. He submitted that the plaintiffs have no objection if the defendants carry out construction in respect of 570 sq.ft. land, which is allotted as per agreement dated 06.04.2000. However, they have committed encroachment and are carrying out construction in excess of 570 sq.ft., that too, without obtaining permission from the Planning Authority. He submitted that 7/12 extract records possession of the plaintiffs, which clearly shows that plaintiffs are in possession of the property other than 570 sq.ft. land out of the suit property. The Courts below, therefore, committed serious error in rejecting the application for injunction.

6. Mr. Sonawane further submitted that defendants admitted their possession over 570 sq.ft. land. He has invited my attention to the reply filed by the defendant No.1, and in particular paragraph 4, as also the reply filed by defendants No.2 to 7, and in particular paragraph 4 thereof. Defendants admitted that 570 sq.ft. land was allotted to

defendant No.1 However, they do not claim that in addition to 570 sq.ft. land, some land was allotted to defendants. Mere denial that except 570 sq.ft., rest of the property belongs to the plaintiffs cannot be construed to mean that defendants claim possession and ownership in respect of area exceeding 570 sq.ft.

7. I have considered the submissions advanced by Mr. Sonawane. I have also perused the material on record. The moot question is whether under the agreement dated 06.04.2000, Govar was allotted only 570 sq.ft. land as contended by the plaintiffs or was allotted eastern portion of the suit property. The Courts below, and in particular, appellate Court has considered this aspect in paragraph 13 of the impugned order. In paragraph 13, the learned District Judge has noted that the boundaries given in the agreement dated 06.04.2000 tallied with the map filed by the plaintiffs. The learned District Judge also considered mutation entry No.759 and observed that there was division amongst the plaintiffs and father of defendant No.1 regarding the land mentioned in the agreement dated 06.04.2000 and the eastern part was allotted to the father of the defendant No.1 and remaining western part was allotted to the plaintiffs. In paragraph 15, the learned District Judge noted the contentions advanced on behalf of the plaintiffs that as per the agreement dated 06.04.2000, area admeasuring 570 sq.ft. was given to the father of defendant No.1 and the contention advanced on behalf of defendants that the area mentioned within the four boundaries in the said agreement was given to the father of defendant No.1. It is settled position in law that if there is dispute between area and boundaries, the boundaries will prevail. In view thereof, I do not find that the Courts below committed any error in dismissing the application as the Courts below, prima facie, came to the conclusion that eastern part of survey No.8/26 was allotted to father of the defendant No.1 and not only 570 sq.ft. land as claimed by the

plaintiffs. Hence, Petition fails and the same is dismissed.

8. It is needless to observe that the observations made herein are tentative and prima facie and are made only for the purpose of considering the correctness of the impugned order. The learned trial Judge will decide the Suit on the basis of evidence on record and in accordance with law and uninfluenced by the observations made in this order. Order accordingly.

(R. G. KETKAR, J.)

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