IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6479 OF 2016

Ashok Lakshman Gholap,
R/o. Plot No.137,
Dr.Ambedkar Housing Society,
Jaysinghpur, Tal.Shirol, Dist.Kolhapur.

2. Prakash Laxshman Gholap,
R/o Ratnappa Anna Kumbhar Nagar,
Panchgaon, Tal. Karvir, Dist.Kolhapur. … Petitioners

v/s

Shivaji Dadu Pawar &
Arvind Sadashiv Fatale,
Both r/o Sagaon, Tal.Shirala, Dist.Sangli. … Respondents

Mr.Surel Shah for the petitioners.

Mr.Bhushan Walimbe for the respondents.

Coram: N.M. Jamdar, J.

Dated: 19 August 2016

ORAL ORDER:

The Petitioners challenge the order dated 20 April 2016 passed by the District Judge, Islampur, allowing the miscellaneous appeal filed by the Respondents. The appeal filed by the Respondents was allowed by imposing certain conditions.

2 The Petitioners filed the suit bearing No.120 of 2015 seeking relief of partition of the suit property and claiming certain right of construction. In this suit, the Petitioners filed an application below Exh.5 for temporary injunction. This application was allowed by the learned Civil Judge and Respondents were restrained from carrying out construction in the suit property. In the appeal filed by the Respondents, the order was reversed and the injunction was vacated by imposing certain conditions on the Respondents.

3 Learned counsel for the Petitioners submitted that the learned District Judge was in error in vacating the injunction and merely by imposing certain conditions permission cannot be granted to the Respondents strangers to construct upon the suit property, which is yet to be divided. Learned counsel for the Respondents submitted that father of the Petitioners has already constructed their residential house on portion of the property CTS No.290. It is also submitted that the position in property extract from the year 1982 shows that the family members have been residing separately.

4 The learned District Judge, after considering the evidence on record *prima facie* found that the family members are staying separately since the year 1982-1983 and there appears to be oral partition, pursuant to which some of the family members sold the property to the Respondents. The Respondents have given an

undertaking that they will remove the structure if the suit is decreed against them and also certain undertaking regarding excess area, if need. Learned District Judge has found that this undertaking is sufficient to balance equities as an interim arrangement pending the suit. The Petitioners have already constructed their residential house. Respondents, if permitted, have already filed undertaking that they will remove the suit structure if the decree is against them. In these circumstances, it cannot be said that the learned District Judge has exceeded his jurisdiction or the discretion used is perverse. The undertaking given by the Respondents to the Trial Court, as well as the District Court, is accepted.

5 In view of this position, no case is made out for interference. The writ petition is rejected.

(N. M. Jamdar, J.)