

Sequeira

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

WRIT PETITION NO. 8260 OF 2016

Umesh Guruling Keripale & ors. .. Petitioners

Vs.

Baburao Mallappa Marade & ors. .. Respondents

Mr.Mahindra Deshmukh, for Petitioners.

Mr.Bhushan Walimbe, for Respondent No.1.

Mr.Prashant Jadhav, for Respondent No.2.

***CORAM : N.M.Jamdar, J.
Tuesday, 6 September 2016.***

P.C. :

The Petitioners challenge the order passed by the learned Principal District Judge, Sangli dated 1 July 2016 partly allowing the Miscellaneous Civil Appeal No.125 of 2016 filed by the Respondent No.1 and injuncting the Petitioners from opening windows, doors and staircase of the disputed building in the suit portion.

2. The Respondent No.1 has filed a suit seeking order of injunction against the Petitioners, that the Petitioners should not in any manner cause obstruction or encroachment on the suit property nor carry out construction on the suit property. In the decision in the Regular Civil Appeal No.362 of 1966, a finding has been rendered that part of the northern property is in ownership of the Respondent-Plaintiff. The impugned order by which the Petitioners

have been restrained from opening windows, doors and staircase, at first glance appears to be a harsh direction. However even if this direction is set aside, unless the Petitioners are able to get a positive direction permitting the Petitioners to use the access through the Respondent-Plaintiff property, nothing is gained from merely opening the doors and staircase of the construction, since the Petitioner must step out in the property through the doors constructed.

3. The learned counsel for the Petitioners sought to contend that no such order for access is necessary as Respondents have never restrained the Petitioners. The learned counsel for the Respondent-Plaintiff has denied this position and has asserted that the petitions are not permitted to use the access. In view of this denial, it is necessary for the Petitioners to seek positive direction. If the positive direction in favour of Petitioners is granted by any Court then naturally there will be some meaning in opening the doors and staircases to utilise the said access so granted. In short, without any positive order in favour of the Petitioners for grant of access, the opening of doors, staircase remains an academic exercise. Since there is no positive direction in favour of the Petitioners as yet by any Court, there is nothing achieved by setting aside the impugned order. With this clarification, the Writ Petition is disposed of.

(N.M.Jamdar, J.)