

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.2670 OF 2013

Nandkumar S/o Vishwanath Lolge... Petitioner.

Versus

Mohan S/o Sukhdeo
Dahiwal and others. ... Respondents.

...
Mr.B.A.Dhengale, advocate holding for
Mr.S.D.Ghayal, advocate for the petitioner.
Mr.C.V.Dharurkar, advocate for Respondent Nos.1
to 4 and 6.

...

CORAM : S.V.GANGAPURWALA J.

Date : 28.08.2017.

PER COURT :

1. The Respondents are the original plaintiffs . Along with the suit, plaintiffs filed application for injunction. The same was rejected. In an appeal filed before the District Court, the District Court allowed the appeal,

restraining the defendants from carrying on construction and restraining from creating any access in the disputed portion till the disposal of the suit.

2. I have heard Mr.Dhengale, learned counsel for the petitioner and Mr.Dharurkar, learned counsel for Respondents.

3. It is submitted that pursuant to the orders of this Court on 13.6.2013, the present petitioner had made an application for construction permission and the same was granted by the authority and as per the said permission, compound wall is constructed.

4. On 25.12.2013, this Court had observed that there is no interim order passed by this Court and thereafter, the matter was adjourned.

5. It is submitted by learned counsel for the petitioner that even the plaintiffs have not adduced the evidence as yet.

6. There was no reason for the trial Court not to proceed with the suit when the proceedings in the suit were not stayed by this Court.

7. Even otherwise, the observations made while deciding the temporary injunction application are prima facie in nature and the Court has to decide the suit on its own merits in accordance with the evidence led before it.

8. Considering the fact that the suit must be ripe for evidence, I dispose of Writ Petition with directions to the learned trial Judge to dispose of the suit if pending, expeditiously, preferably within six months. The parties shall cooperate in expeditious disposal of the suit.

9. Needless to state all contentions of respective parties are kept open.

(S.V.GANGAPURWALA, J.)

