

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4537 OF2016

Anna Damu Waghmode & others

Petitioners

Versus

Deorao Eknath Wadane & others

Respondents

Mr. N.S. Jaju advocate for the petitioners

Mr. D.S. Bharuka advocate for Respondent Nos.1 to 3

CORAM : RAVINDRA V. GHUGE, J

(Date : 21st June, 2017.)

PER COURT :-

1 The petitioners are aggrieved by the order dated 20.6.2015 passed by the Trial Court, by which Application Exh.5, seeking injunction under Order 39 Rule 1 of the Civil Procedure Code has been rejected. The petitioners are also aggrieved by the order dated 17.2.2016 passed by the Appellate Court, by which the Miscellaneous Civil Appeal No.110/2015 filed by the petitioners has been dismissed.

2 I have considered the extensive submissions of the learned counsel for the respective parties. Since the learned Advocates have arrived at a consensus, I am not adverting to their entire submissions.

3 The issue is, as regards the existence of six trees which are said to be about 25 to 30 years old or probably even more than that. By order dated 27.4.2015, the Sub Divisional Officer, Pathardi granted permission to the respondents - defendants to cut down these trees.

4 This Court, by order dated 20.4.2016, while issuing notices, has observed that, if the trees have still not been cut, *status-quo* as existing, shall be maintained. Both the learned counsel for the respective parties submit that the trees have not been cut and they are still alive.

5 Mr. D.S. Bharuka, learned counsel has strenuously contended that prima facie, the said trees are within the boundaries of the land of the defendants. Since the Trial Court has come to a conclusion that four neem trees and two babul trees appear within the boundaries of his land, no injunction can be clamped. The petitioners have contended that those six trees are not within the boundaries of the defendants land, but are situated on the bandh in between the lands of the petitioners and the respondents.

6 Since it is a matter of life of the trees and if they are cut down, they would not be brought back to life if the plaintiffs

succeed in the suit, that Shri Jaju suggested that the TILR of Shevgaon can be appointed to carry out a joint measurement of the land and the location of the trees, he may even take photographs if required and submit his report, a map and the photographs. The plaintiffs would pay for this exercise. Mr. D.S. Bharuka responded by stating that, if a time frame is scheduled for completing such exercise, the defendants would not object.

7 In the light of the above, the impugned orders stand modified and replaced by the order of this Court dated 20.4.2016 by which *status-quo* with regard to the said trees has been ordered. This petition is disposed off by consent, with the following directions:-

A) The plaintiffs shall move, within two weeks from today, an application for appointment of the TILR of Shevgaon for measuring the lands of the plaintiffs as well as the defendants, mark the location of the suit trees, take photographs and draw a map.

B) If the said application is filed, the defendants would not oppose and the Trial Court would allow the said application by issuing necessary directions to the TILR Shevgaon as observed above.

C) The Trial Court shall direct the TILR to complete the exercise of measuring the land of the plaintiff and the defendants, locate the suit trees, take photographs and submit a report along with map and the photographs within a period of six weeks thereafter.

D) The Trial Court shall also direct the TILR that the said exercise would be performed in the presence of the plaintiff and the defendants by giving them prior notice.

E) After the report of the TILR with the documents mentioned as above, are placed on record, the litigating parties would be at liberty to deal with the same as permissible in law.

F) The plaintiffs would refrain from seeking adjournments on unreasonable and trivial grounds.

(RAVINDRA V. GHUGE , J)