

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

WRIT PETITION NO. 5555 OF 2017

Hemraj Kachrual Samdariya

..PETITIONER

VERSUS

Bandu Dhondiram Pawar and Others

..RESPONDENTS

....
Mr. S.V. Munde, Advocate for petitioner.

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**CORAM : M.S. SANKLECHA, J.
DATED : 02nd MAY, 2017**

ORDER :

1. This petition challenges the order dated 09th February, 2017 passed by the Ad-hoc District Judge-2, Beed. The impugned order rejects the petitioner's application for restraining the demolition of the boundary between the suit land Gut No. 504 owned by the petitioner and Gut No. 505 owned by the respondents in an appeal from the order of the Trial Court dated 04th May, 2012 dismissing the petitioner's suit alleging encroachment on its property by the respondents.

2. The order dated 04th May, 2012 of the Trial Court dismissed the suit for encroachment after hearing the parties. Being aggrieved the petitioner filed an appeal to the Ad-hoc District Judge-2, Beed. In the pending appeal an application was taken out by the petitioner for interim relief. This for the

reason that in view of the Trial Court order, the respondent is seeking to disturb the boundary. The impugned order concludes that this very issue before the Trial Court was decided in favour of the respondents and is subject to final decision of the Appeal Court. Therefore the impugned order dated 09th February, 2017 rejected the interim application.

3. Mr. Munde, learned Counsel for the petitioner submits that pending disposal of its appeal, the respondents should have been restrained from demolishing the boundaries. It is further submitted that final order dated 04th May, 2012 of the Trial Court is subject to final order by the Appellate Court after hearing the parties and in these circumstances, the status-quo as existing should be maintained. Reliance is placed upon the decision of the Apex Court in the case *Julien Educational Trust Vs. Sourendra Kumar Roy and Others (2010) 1 SCC 379* wherein the Apex Court observed that an interim order is required to be passed to maintain status-quo in respect of the suit property during the time the suit for specific performance is pending.

4. It is relevant to note that the suit has been filed by the petitioner alleging encroachment by the respondents (defendants) on the property owned by the petitioner. The Trial Court had concluded that the petitioner is not able to prove any encroachment by the respondents on the property claimed to be belonging to the petitioner.

5. In the aforesaid circumstances, refusal to exercise jurisdiction to grant any interim relief by the impugned order pending disposal of the appeal is a reasonable view to take in the facts of the present case. In case the petitioner succeeds finally in its appeal and it is held that the respondents are encroaching upon the land of the petitioner, restitution would take place. However it is not fair for the petitioner to deprive the respondents from enjoying the fruits of the order passed by the Trial Court.

6. The reliance placed on the decision of Julien Educational Trust (supra) is not applicable to the facts of the present case for it dealt with interim orders in original proceedings. Here we are concerned with interim stay in appellate proceedings. Moreover, it is noted that in the final order dated 04th May, 2012 of the Trial Court at paragraph 10 thereof it is recorded that there were no boundary stones to demarcate the boundaries of Gut No. 504.

7. In view of the above, no interference is called for under Section 227 of the Constitution of India. Petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

SSD