

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

WRIT PETITION NO. 4710 OF 2014

1. Amol Changdeo Dudhal
age 31 years, occ. agril
2. Alka Changdeo Dudhal
age 52 years, occ. household
3. Nitin Changdeo Dudhal
age 33 years, occ. agril

All r/o Belapur (Gokhalewadi)
Tq. shrirampur, Dist. Ahmednagar

.. PETITIONER

VERSUS

1. Smt. Vimal Dattatray Gholap
age 57 years, occ. household
r/o "Vithal Sadan", opposite to
Kauthi Talim, Maliwada, Ahmednagar
Dist. Ahmednagar.
2. Sow. Kamalbai Namdeo Shinde
age 62 years, occ. household
r/o Dhamangaon, Tq. Kopargaon
Dist. Ahmednagar.

.. RESPONDENTS

Mr. R. R. Karpe, advocate for petitioners.

Mr. A.B. Kadethankar, advocate for respondents 1 and 2.

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CORAM : S. B. SHUKRE, J.

DATE : 19th JANUARY, 2017.

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.
3. On going through the impugned order, in so far as operative part no.

4 is concerned, I am of the view that the learned counsel for petitioners is right in his submission that by this part of the order, the learned Jt. Civil Judge, Jr.Dn., Shrirampur, has granted final relief in an application filed for grant of interim relief. Such relief could not have been granted by the learned Civil Judge at this interlocutory stage. To this extent, the impugned order dated. 19.04.2014 would have to be called as patently illegal and as such, liable to be quashed and set aside.

4. As regards operative portions 2, 3 and 5 are concerned, though they reflect some of the final reliefs claimed in the suit, it cannot be said that these parts of the impugned order would cause any prejudice or grave injustice to the parties. The reason being that the final relief claimed by the original plaintiffs is relating to grant of perpetual injunction against the defendants, after the issues of fixation of boundaries of the suit property and encroachment are finally decided and, such determination would not be possible unless the concerned reliefs claimed in the suit are granted. Thus, the other reliefs, though stated to be forming part part of the final relief, could not be considered as raising any final claim. Therefore, the learned Civil Judge has rightly granted these reliefs and that was very essential for arriving at an appropriate decision in respect of final relief of grant of perpetual injunction or otherwise.

5. In these circumstances, I am of the view that writ petition deserves to be partly allowed and it is allowed accordingly. The impugned order, as regards operative part no. 4, is quashed and set aside and, rest of the

impugned order is maintained. Parties to bear their own cost. Rule made absolute in the above terms.

(S. B. SHUKRE)
JUDGE

dyb