

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1963 OF 2016

SHIVAJI GIRDHAR PATIL AND ANOTHER
VERSUS
HARI AMRUT PATIL AND OTHERS

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Advocate for Petitioners : Shri Brahme Shailesh P..
Advocate for Respondents : Shri Bhokarikar Madhav M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2017

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PER COURT :-

1. The petitioners, who are original defendants in RCS No.156 of 2008, are aggrieved by the order dated 20.6.2013 passed by the appeal Court, by which, the application Exhibit 5 has been rejected.

2. I have heard the learned Advocates for the respective sides for some time.

3. The respondent No.1 / plaintiff had sought declaration and injunction in RCS No.156 of 2008, against the petitioners / defendants with reference to his claim in the suit property. The petitioners, who are the cousins of the plaintiff, are aggrieved by the claim of the plaintiff to the extent of 223 sq. meters in the suit Plot No.9/1. The plaintiff claimed a part of the said plot.

The suit was decreed by judgment dated 31.12.2012 and it was concluded that a portion of the said plot shall belong to the plaintiff Amrut Patil. The defendants were directed not to interfere with his portion of the plot.

4. After preferring the RCA No.50 of 2013, the petitioners / defendants moved an application for interim stay to the decree. The appeal Court has declined the said relief on the ground that the statement was made by the learned Advocate for the plaintiff, that though execution proceedings have been initiated and they would not dispossess the defendants, that application Exhibit 5 was rejected.

5. Shri Brahme, learned Advocate for the defendants submits that they would not have otherwise objected if the construction which is likely to be initiated by the plaintiff would have been restricted to his title over a part of the plot. The plaintiff has commenced preparations for construction and that construction is proposed over a portion of the plot belonging to the defendants. He has, therefore, urgently circulated this matter.

6. Learned Advocate for the respondent No.1 / plaintiff submits that he is not aware as to whether the construction has commenced though the pending appeal can be expedited.

7. I find that the ends of justice will be met by directing the appeal Court to decide the appeal which is pending from 2013. However, if the plaintiff commences the construction and if the said construction appears to be on that portion of the plot to which the defendants have a title, it would create further complications in this matter and the situation may arise that such a construction or a part thereof will have to be demolished. I, therefore, find it more pragmatic and appropriate even from the interest point of all the litigating sides that the appeal be expedited and until then the plaintiff would not commence his construction.

8. Considering the above, this petition is disposed off with a direction to the appeal Court to decide RCA No. 50 of 2013 as expeditiously as possible and preferably on/or before 30.11.2017. Until then, the plaintiff would not commence his construction in the interest of both the parties. Needless to state, the litigating sides would refrain from seeking adjournments on unreasonable grounds and will render cooperation to the appeal Court to decide the appeal within the time frame.

(RAVINDRA V. GHUGE, J.)

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