

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9882 OF 2016

1. Abdul Hamid s/o Abdul Karim Shaikh,
Age-54 years, Occu-Agriculture,

2. Sumaiyya Abdul Shaikh,
Age-46 years, Occu-Agriculture,

Both r/o Shahagad, Tq.Ambad,
Dist. Jalna

-- PETITIONERS

VERSUS

1. Shivaji s/o Pandharinath Peche,
Age-60 years, Occu-Retired,

2. Taibai w/o Shivaji Peche,
Age-56 years, Occu-Agriculturist
and Household,

3. Sachin s/o Shivaji Peche,
Age-46 years, Occu-Agriculture,

All R/o Shahagad, Tq. Ambad,
Dist. Jalna

-- RESPONDENTS

Mr.G.R.Syed, Advocate for the petitioners.

Mr.S.S.Thombre, Advocate for respondent Nos.1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/07/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The subject matter of this petition assumes importance as it pertains to the basic necessities of mankind in relation to constructing a wash room (toilet) and using the same.

3. By an order dated 15/10/2015, the Trial Court allowed application Exh.5 filed by the petitioners/plaintiffs in RCS No.169/2015 and directed the respondents/defendants not to obstruct the peaceful possession of the plaintiffs and not to construct a wash room (toilet) over the suit property situated in front of the plaintiffs' house. For the sake of clarity, the operative part of the order dated 15/10/2015 is reproduced as under :-

“1. The plaintiffs' application below Exh.5 is hereby allowed.

2. The defendants are hereby directed not to obstruct plaintiffs' peaceful possession over suit property more particularly described as Grampanchayat House No.852, admeasuring 1457 Sq.ft and house No.854 admeasuring 990 Sq.ft situated at Shahagad, Tq.Ambad, District Jalna and not to construct toilet over suit property which is situated in front of plaintiffs' house and also not to close the drainage line flow which passes through this vacant space by themselves or through their agents, servants or relatives by temporary injunction till the final decision of present suit.

3. Costs in cause.”

4. Needless to state, the grievance of the plaintiffs is that the defendants intend to construct a wash room (toilet) beyond their property and which is likely to be erected right in front of the front door of the plaintiffs' house. Considering the dispute between the parties and the contention of the defendants that they do not have the wash room (toilet) from 1997, the Trial Court restrained the defendants from constructing a wash room (toilet) in front of the plaintiffs' house. Needless to state, the directions of the Trial Court can be interpreted to mean that the defendants can construct a wash room (toilet) within their own property and neither on any disputed property nor on the land belonging to the Gram Panchayat.

5. The Appeal Court, while entertaining the Misc. Appeal filed by the defendants, concluded at a prima facie stage that the land opposite the front door of the plaintiffs' house which is commonly described in this part of the State as "*Aangan in Marathi*", does not belong to the plaintiffs. Mr.Thombre strenuously asserts on instructions from the defendant present in the Court that if the '*Aangan*' does not belong to the plaintiffs, then it surely belongs to the defendants.

6. He has based his contentions on a registered sale deed between him and his vendor who was the predecessor in title. Countering this submission, Mr.Syed, learned Advocate for the plaintiffs submits that the earlier Vendor has handed over that '*Aangan*' to the plaintiffs and therefore the same belongs to the plaintiffs. There is no dispute that this aspect is also a subject matter of the suit.

7. Learned Advocate for the plaintiffs submits that they do not have any intention to obstruct the Gram Panchayat if it lays a drainage line in the land belonging to the Gram Panchayat as long as it is an under ground sewage drainage line. Plaintiffs also do not oppose erection of a wash room (toilet) by the defendants within their own land to which they have a title. Plaintiffs further state that if there is any open drainage line meant for rain water and not with regard to a sewage line, any block in such line around the front door of the plaintiffs' house will be opened and cleared at their own costs.

8. Learned Advocate for the defendants submits that they don't intend to occupy the land belonging to the Gram Panchayat. There will be no encroachment on the Gram Panchayat land. They would also not block any drainage line of the Gram Panchayat and would not construct a wash room (toilet) on the land either belonging to the

plaintiffs or the Gram Panchayat. Presently, there is no construction erected.

9. It is, in the peculiar facts as stated above, that I deem it appropriate to direct the litigating sides to maintain *status-quo*, with a direction to the Trial Court to decide RCS No.169/2015 expeditiously. This Court is normally slow in expediting the suits before the Lower Courts and especially when the suits are less to 5-7 years old. However, since the issue involved in this matter pertains to the wash room (toilet) which the defendants desperately need to construct, I am directing the expeditious disposal of the suit.

10. This petition is, therefore, disposed of with the following directions :-

- [a] The statements made by the plaintiffs and the defendants set out in paragraph Nos.7 and 8 are recorded as statements made to the Court and the litigating sides are directed to maintain status-quo as on date.
- [b] The plaintiffs would file an application for appointment of the Court Commissioner within 3 (three) weeks from today and the defendants will not oppose the said application.
- [c] The Trial Court would allow the application for appointing the Court Commissioner and would issue directions to the Court Commissioner for inspecting the suit land and the properties of

the plaintiffs as well as the defendants by conducting a joint measurement on a particular date as would be mentioned by the parties before the Trial Court.

- [d] The Court Commissioner would draw a proper map, fix the boundaries and demarcate the lands belonging to the plaintiffs and the defendants and if possible, suggest the place at which a wash room (toilet) can be erected by the defendants on their own property without causing a hindrance to the plaintiffs or the public at large.
- [e] Needless to state, any grievance by the litigating sides about the map and the report of the Court Commissioner shall be entertained by the Trial Court in accordance with Law.
- [f] RCS No.169/2015 shall be decided expeditiously by giving preference to the said matter in the light of the issue involved and the same shall be disposed of on or before 29/12/2017.
- [g] The litigating sides shall be precluded from seeking adjournments on frivolous and trivial grounds and the Trial Court may impose costs if such instances are noticed.

10. In this view of the matter, writ petition is partly allowed and rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)