

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.531 of 2016

Shri Sai Sansthan Kautha,
Tq. & Dist. Nanded
A public Trust,
Through : Jagannath S/o Madhavrao Chakrawar
Age: 60 years, occu: business
R/o Dilipsing Colony, Vazirabad, Nanded
Tq. & Dist. Nanded

Petitioner

Versus

Chandraprakash S/o Shriram Kunturwar
age: 52 years, occu: Agril
R/o Sainagar, Nanded
Tq. & Dist. Nanded

Respondents

Mr.Subhash Sawangikar advocate for the petitioner
Mr.B.G.Deshmukh advocate for Respondent

CORAM :S.B. SHUKRE, J

(Date : 7TH February, 2017.)

ORAL JUDGMENT

1 Heard.

2 Rule. Rule made returnable forth with and heard finally by consent of the learned counsel for the parties.

3 It is the contention of the petitioner, original defendant that taking dadvantage of the order of injunction, operating in favour

of respondent, respondent has encroached upon the land in possession of the petitioner, by making some construction therein. In support, he invited my attention to the copy of the Panchanama dated 5.12.2015, which mentions the fact that the respondent has constructed a brick wall over some area in possession of the petitioner.

4 As rightly submitted by learned counsel for respondent, the scope of this writ petition is confined to only examining the legality and correctness of the impugned orders, first of which having been passed on 7.1.2015, much before drawing of Panchanama on 5.12.2015. The order of the District Judge is dated 5.10.2015 which confirms the first order dated 7.1.2015 similarly examines the legality and correctness of the said order dated 7.1.2015. Therefore, if any development, subsequent to passing of these orders takes place and the said development in the opinion of the petitioner, has a bearing upon the impugned orders, the petitioner should have to file an appropriate application before the Trial Court, pointing out all the relevant facts as well as relevant submissions to the notice of the trial Court, so as to seek revocation or modification of the impugned orders. But, in exercise of extraordinary jurisdiction of this Court under articles 226 and 227 of the Constitution of India, it would

not be permissible for this Court to test correctness or otherwise of the impugned orders, on the basis of something which was not in existence at the time, when the impugned orders were passed and thus the Courts below had no opportunity to consider those developments. In this view of the matter, I see no merit in this petition. The petition, is therefore, dismissed with costs. However, liberty is given to the petitioner to move an appropriate application before the Trial Court, seeking appropriate relief.

5 Rule is discharged.

(S.B. SHUKRE, J)