

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3646 OF 2017

Smt.Vaidehi Ravindra Kale ... Petitioner

Vs.

Smt.Anjali Uday Dabke & anr. ... Respondents

Mr.S.M. Gorwadkar i/b Mr.Niranjan Mogre for Petitioner
Mr.S.J. Chitale for Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 5, 2017**

P.C. :

1. This Writ Petition is directed against the order dated 27.10.2016 passed by the learned Civil Judge, Junior Division, Pune, in Regular Civil Suit No.1667 of 2016 and also the order dated 7.1.2017 passed by the learned District Judge, Pune, in Miscellaneous Civil Appeal No.417 of 2016, thereby confirming the order passed by the learned trial Judge. The plaintiff, who is the petitioner, has filed the suit for declaration and injunction before the trial Court. The application below exhibit 5 was preferred by the plaintiff for restraining the defendant temporarily from using for parking of the vehicle in the open space in the west side of the building. The plaintiff and respondent No.1 are the real sisters and

they are owners of two flats in the said building as they are gifted to them by their mother. However, there is a dispute between the two sisters on the ground of parking of their vehicles. The petitioner is the owner of three cars and the respondent is the owner of two cars. The application below exhibit 5 was rejected by the learned trial Judge. Thereafter, the said order was confirmed in the appeal filed by the petitioner.

2. The learned Counsel for the petitioner submitted that the cars over the strip towards the west side of the building, are parked by the respondents in such a manner that the entire passage and the entry to the strip is blocked and it is used by the petitioner to park her car or take out the car if parked. He further submitted that towards the east side of the building, there is ample space for parking which can be used by the parties. Besides these two flats, there are two more flats in the west wing and the owners/residents of those two flats also have their cars and they also park on the same strip. But all these cars can be parked on the open space and which is called as a parking space towards east side. The learned Counsel further submitted that the parking space is ear-marked in the sanction plan of the Corporation and

the east side open strip is not a parking area. He submitted that the point of declaration that the petitioner is the exclusive owner of the west side strip is in issue in the Suit. However, he submitted that the observations made by the trial Court and the learned District Judge, Pune, while deciding the application below exhibit 5 are erroneous and they have not taken into account that the space on the said strip is not sufficient for car parking.

3. Per contra, the learned Counsel for the respondents has submitted that the respondents so also the petitioner and other two owners/residents in the building are all parking their respective cars on this west side strip. He supports the order of the both the Courts below.

4. Perused the plaint. Perused the orders of the trial Court and the District Court. A concurrent finding is given by both the Courts below. While passing the order, the trial Court has also taken into account eight affidavits filed by the residents of the two wings of the building. I am not inclined to disturb the concurrent finding of the two Courts below. It appears that the real issue in the Suit is in respect of claim of exclusive ownership of the west side strip by

the petitioner. However, that can be tried and decided after recording both oral as also documentary evidence. However, on perusal of the plan of the building disclosing the open space around the building, it appears that the west side strip is not an approved parking area but it is a compulsory open space. However, when there are more vehicles, the residents generally park the vehicles wherever the space is available.

5. Considering all this, a practical approach needs to be adopted and so, with some modification in the impugned orders, the petition is dismissed. Accordingly, the impugned orders are partially modified to the extent that the defendant is allowed to park her one car towards southern side of the west strip. However, she should take care that it should not block the rear entry of the flat of the petitioner. Further, the petitioner may park her one car towards northern side of the strip and both shall keep the access free for egress and ingress of the cars leaving sufficient space in the west strip. It is made clear that this order is in respect of parking of the cars of the petitioner and the respondents only and not against other residents.

6. I am constrained to observe that the suit for parking between the two sisters should have been settled amicably as it is a family dispute and it is a matter of adjustment, which is required and the parties should not have come to the Court.

7. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)