

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

WRIT PETITION NO.8003 OF 2015

Shri Bhalchandra Dattaram Kuthe & Ors. ... Petitioners

Vs.

Shri Hemant Mangesh Padate ... Respondent

**with
WRIT PETITION NO.3993 OF 2015**

Shri Hemant Mangesh Padate ... Petitioner

Vs.

Shri Bhalchandra Dattaram Kuthe & Ors. ... Respondents

Mr.Surel Shah with S.J Chourasia i/b Ashoka Law Firm for the
Petitioners in WP/8003/2015 and for Respondent in
WP/3993/2015

Mr.S.G. Deshmukh i/b S.K. Hande for Petitioner in WP/3993/2015
and for Respondents in WP/8003/2015

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 24, 2017**

P.C. :

1. Both these petitions are disposed of by this common order as the parties have filed the petitions against each other and accordingly, they are addressed by their original status in the suit.

2. These two petitions are directed against the order dated 15.7.2015 passed by the learned Principal District Judge, Raigad-Alibag in Miscellaneous Civil Appeal No.20 of 2015 thereby modifying the order dated 13.3.2015 passed below exhibit 34 in Regular Civil Suit No.59 of 2011. The plaintiff has filed the suit initially for injunction and thereafter, by way of amendment, he sought the relief of mandatory injunction and possession of the encroached land of 68' / 12' admeasuring approximately 3 / 4 gunthas by constructing a wall. In exhibit 5 while granting interim relief, the learned trial Judge has directed the defendants to demolish the entire wall. However, the said order was modified by the learned Principal District Judge who directed to demolish 5' portion of the said wall.

3. During the course of arguments, it was suggested that the order passed by the learned District Judge is of 2015 and the Regular Civil Suit pending before the trial Court is of 2011 and the issue involved in the said suit is in respect of construction of the wall and the ownership of encroached portion on which the wall is constructed. It is informed by both the learned Counsel that the defendant and the plaintiff have purchased the land from the same

owner. In view of these facts and considering the time-gap as also since the suit is of 2011, the Writ Petitions are disposed of with the following directions:

- i) The trial Court is directed to proceed with the suit and expedite the same and conclude it on or before 31.12.2017.
 - ii) All contentions of the parties are kept open.
 - iii) The parties shall maintain status quo as on today till the disposal of the suit by the trial Court.
4. Writ Petitions are disposed of in the above terms.

(MRIDULA BHATKAR, J.)