

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 548 OF 2018

SANJIWANI PANDURANG YADAV AND OTHERS
VERSUS
DILIP CHHABURAO KALE AND ANOTHER

...

Advocate for the Petitioners : Shri Sukale G.V.

Advocate for Respondent 1 : Shri Tele D.V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2018

Per Court:

1 The Petitioners/ original Plaintiffs are aggrieved by the judgment and order dated 07.12.2017 delivered by the learned Principal District Judge, Osmanabad thereby, allowing Miscellaneous Civil Appeal No.83/2017. Consequentially, the order granting temporary injunction dated 16.09.2017 below Exhibit-5 delivered by the Trial Court in RCS No.725/2017, has been quashed and set aside.

2 The learned Advocate for the Petitioners has strenuously criticized the impugned order. He has canvassed a host of factors. He has drawn my attention to the nine grounds formulated by him in the memo of the petition.

3 With the assistance of the learned Advocates, I have gone

through the petition paper book.

4 The Trial Court had granted temporary injunction to the Petitioners. I find in paragraph 6 of the plaint that the Plaintiffs contended that in the alternative if the Court comes to a conclusion that the Plaintiffs do not have the possession of the suit property, the Court may assist the Plaintiffs by directing recovery of possession. After temporary injunction order was granted, the Plaintiffs had approached the Police for protection, by filing an application, which was before the Appellate Court in which, it was stated that on 08.10.2017, the Plaintiffs reached the suit property for cleaning up the dirt in the property and noticed that the Defendants were not permitting the Plaintiffs to enter the said suit property. It was stated that there was a building standing on the suit property.

5 The Appellate Court has concluded, on the basis of evidence, by drawing a prima facie conclusion that the Defendants are residing in the two storied building that has been constructed over the suit property. They have been granted electricity connection by the concerned Department. Two Galas (Shops) in the said property have been rented out.

6 Considering the above, it appears that the Defendants have constructed their two storied building over the suit property, are residing in the same and have also let out two Galas to the tenants.

7 In the light of the above, I do not find that the impugned judgment could be termed as being perverse or erroneous. The Writ

Petition being devoid of merit is, therefore, dismissed.

8 Needless to state, the observations of this Court are restricted to the decision on the order of granting injunction by the Trial Court, which has been vacated by the Appellate Court.

kps

(RAVINDRA V. GHUGE, J.)