

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

WRIT PETITION NO. 1149 OF 2017

MUKUND RAJARAM HAPSE AND ANOTHER
VERSUS
SHAKINA HASIN SHAIKH AND ANOTHER

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Advocate for the Petitioners : Shri Karpe Rahul R..
Advocate for Respondents 1 and 2 : Shri Khandagale Patil PP.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2018

Per Court:

1 The Petitioners/ original Plaintiffs are aggrieved by the impugned orders passed by the Trial Court dated 25.05.2015 and by the Appellate Court dated 04.01.2017. The Trial Court refused the injunction to the Plaintiffs in Regular Civil Suit No.117/2015 and the Appellate Court has dismissed Miscellaneous Civil Appeal No.12/2015.

2 The Plaintiffs contend that there is a common compound wall between the house properties of the Plaintiffs and the Defendants. The Defendants desire to raise the height of the compound wall and lay tin sheets adjoining the house wall over compound wall, thereby, affecting the easementary rights of the Plaintiffs. The documents indicating the common expenditure for erecting the compound wall, are said to have

been placed on record.

3 The learned Advocate for the Respondents/ original Defendants submits that there is a gap of three feet between the compound wall surrounding the house property of the Defendants and the compound wall around the house property of the Plaintiffs. It is further canvassed that the Plaintiffs have resorted to an illegal construction of the house property.

4 RCS No.117/2015 has been filed by the Plaintiffs seeking perpetual injunction against the Defendants. The issue is as regards whether, the Defendants should raise the height of the compound wall and whether, laying of tin sheets on the compound wall, are likely to affect the easementary rights of the Plaintiffs. It is informed that after the suit was instituted, the Plaintiffs were granted ad-interim protection. Even after Exhibit-5 was rejected on 25.05.2015, the Appellate Court continued the relief during the pendency of the appeal and the same was continued even after the Appellate Court dismissed the appeal on 04.01.2017. This Court granted interim relief to the Plaintiffs on 24.01.2017 by continuing the interim protection granted by the Appellate Court.

5 Considering the above, I am of the view that ends of justice would be met by expediting the suit so as to enable the Trial Court to finally adjudicate upon the main dispute.

6 As such, this Writ Petition is disposed of with the following

directions :-

- (a) The Trial Court shall decide RCS No.117/2015 as expeditiously as possible and in any case on or before 31.03.2019.
- (b) The litigating sides would be precluded from seeking adjournments on unreasonable and trivial grounds and the Trial Court would be at liberty to reject such applications.
- (c) Needless to state, the interim relief granted by this Court shall continue to bind the parties till 31.03.2019 or till the final decision in the suit, whichever is earlier.
- (d) All contentions of the litigating sides are kept open.

kps

(RAVINDRA V. GHUGE, J.)