

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

941 CIVIL APPLICATION NO.5565 OF 2018
IN SA/393/2009

WITH

CA/1509/2016 IN SA/393/2009

WITH

CA/9810/2018 IN CA/5565/2018 IN SA/393/2009

VIJAYKUMAR ASARAM BAJAJ

VERSUS

VISHWANATH PUNDLIK BOBADE L.RS. LAXMIBAI AND ORS

...

Advocate for Applicant : Mr.MG Deokate, Adv.
h/for Mrs.Dhumal S.A. (Tambat)

Mr. A. R. Nikam, Advocate For R/ 1(a)(b), 2 & 3;
Mr. RR Karpe, Adv. For Resp.Nos. 4 & 5.

CORAM : P.R.BORA, J.

DATE : 31th July, 2018.

PER COURT :

1) Civil Application No.5565/2018 was moved
in vacation and the learned Vacation Judge was
pleased to pass following order on 15th May,
2018, -

"1.Heard learned counsel for the
applicant. Issue notice to
respondents No.4 and 5, returnable
on 18th June, 2018.

2. Till that date, respondents No.
4 and 5 shall not carry out any
construction over the suit
property."

2) It is the contention of the applicant that Respondent Nos.4 and 5, in spite of the aforesaid order, continued to carry on construction and the same is currently going on. In the circumstances, the applicants prayed for following relief, -

"(B) Pending hearing and final disposal of this Civil Application Respondent Nos. 4 and 5, their agents, servants, successors, representatives and/or any persons claiming on their behalf may kindly be restrained from creating any encumbrance under any mode or creating third party interest over the suit property as well as changing the nature of suit property by making any kind of construction over the open plots bearing Gram Panchayat House No. 1299./1 & 1299/2, admeasuring 3050 Sq.ft. Situated at Tirthpuri, Tq. Ghansawangi, Dist,. Jalna which is part and parcel of the suit property bearing Survey No. 167 (Gat No. 388), Tirthpuri, Tq. Ghansawangi, Dist. Jalna."

3) As against the contention so raised, it is the contention on behalf of Respondent Nos.4 and 5 that they are the *bonafide* purchasers of the property and they were carrying the construction in accordance with law. It is further contended that after the order passed by this Court on 15th May, 2018, the said respondents did not proceed with the construction further.

4) Shri Karpe, learned counsel appearing for Respondent Nos.4 and 5, submitted that great prejudice would be caused to these respondents if they are restrained from carrying out the further construction. The learned counsel submitted that the said respondents have already furnished an undertaking before this court that if the decision of second appeal goes against them and if the court directs them to hand over the possession of the said plot in vacant condition, Respondent Nos.4 and 5 would demolish the construction carried out by them at their own costs and they will hand over the possession of

the said plot to the present appellant.

5) It appears to me that the purpose of filing the application by the applicant is adequately served in view of the undertaking so given by Respondent Nos.4 and 5. In the circumstances, it does not appear to me that any further order, as prayed for in the present application, needs to be passed. The present application, therefore, stands disposed of.

6) The undertaking given by Respondent Nos.4 and 5 impliedly means that they will not alienate the suit property. Civil application No.1509/2016, therefore, does not survive and hence stands disposed of. In view of the above, CA No. 9810/2018 also stands disposed of.

(P.R.BORA)
JUDGE

bdv/