

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

**CIVIL APPLICATION NO.50 OF 2014
IN
SECOND APPEAL NO.12 OF 2014**

Dattatraya Radhuji Gaikwad	Applicant
V/s.	
Vithhal Radhuji Gaikwad & Ors.	Respondents

Mr. Sanjay P. Shinde for the Applicant.
Mr. Sachin Gite for Respondent Nos.3 and 4.

CORAM : M.S. SONAK, J.

DATE : 22nd FEBRUARY, 2018

P.C.

1. The applicant seeks confirmation of ad-interim relief granted on 07.10.2016 restraining the respondents from undertaking any construction on the suit property and from parting with possession or otherwise creating third party rights in respect of the suit property.
2. Mr. Shinde, the learned counsel for the applicant submits that the second appeal has already been admitted. The interim relief now applied for was always in operation. He submits that if the ad-interim relief is not confirmed, the same will result in multiplicity of proceedings, apart from serious and irreparable prejudice to the applicant. He submits that when the ad-interim order was made,

notice had been served upon the respondents, but respondents failed to appear. For all these reasons, Mr. Shinde submits that the ad-interim relief granted on 17.10.2016 may be confirmed.

3. Mr. Gite, learned counsel for Respondent Nos.3 and 4, who have filed a reply to oppose the confirmation of ad-interim relief submits that Respondent Nos.3 and 4 have purchased the suit property by means of a Registered Sale Deed for the purpose of construction of their house. He submits that there are concurrent findings recorded by two Courts that the construction of the house was infact completed upto the plinth level. He submits that Respondent Nos.3 and 4 are willing to complete the construction of house in the suit property at their own risk and without claiming any equities. He submits that if after several years if the appeal is dismissed, then Respondent Nos.3 and 4 would perhaps be not in the financial position to complete the construction. Mr. Gite submits that for the restraint upon parting with possession or creation of third party rights can remain, but the restraint upon completion of the construction may be vacated by taking into consideration these factors.

4. By taking into consideration the rival contentions as also the material on record, a blanket injunction to restrain completion of

construction may not be appropriate. The impugned judgment and decree is in favour of the respondents. The two Courts have infact held that the construction of Respondent Nos.3 and 4 has reached upto the plinth level. Respondent Nos.3 and 4 have offered to undertake that if they are permitted to proceed with the construction, they will do so at their own risk without claiming any equities at the stage of final hearing of the appeal. To restrain the completion of construction which has already reached the plinth level, will virtually amount to rendering the construction already undertaken, useless. Besides, there is some substance in the contention of the learned counsel for the respondents that, after several years from now the costs of construction will rise and perhaps, be unaffordable to Respondent Nos.3 and 4. If the construction is completed, at least, Respondent Nos.3 and 4 may use the same, subject to the final result in appeal. The applicant will derive no substantial benefit, if the construction is directed to remain incomplete for all these years.

5. Taking into consideration all these factors, the restraint upon completion of construction of the house by Respondent Nos.3 and 4 in the suit property is liable to be vacated. However, the respondents are restrained from creating any third party rights or parting with

possession of the suit property or the constructed structure thereof until the final disposal of this appeal. Further, Respondent Nos.3 and 4, before they proceed with the construction, must file an undertaking in this Court stating that they shall undertake the construction at their own risk as to cause and consequences and further, they will not claim any equities whatsoever in respect of such construction. Copy of such undertaking to be furnished to the learned counsel for the applicant, before any construction commences upon the suit property. It is doubtful that this order is not be construed as dispensation from the legal requirement of obtaining permission from concerned local as other authorities for proceeding with the construction.

6. The ad-interim order granted on 17.10.2016 is confirmed to the aforesaid extent only.

7. Accordingly, the civil application is disposed of in the aforesaid terms without any order as to costs.

(M.S. SONAK, J.)