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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4682 OF 2017

Suturit R. Bhendavade & Anr.

...Petitioners

V/s.

Prakash B. Power & Ors.

...Respondents

Mr.Sandeep Koregave for the Petitioners.

Mr.Manoj Patil for the Respondent No.1.

CORAM : R.D. DHANUKA, J.

DATE : 12TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 9th December, 2018 passed by the learned District Judge – 1, Ichalkaranji, District Kolhapur dismissing Miscellaneous Civil Appeal No.11 of 2016 filed by the petitioners (original defendants). The said appeal was filed by the petitioners *inter-alia* impugning the order passed by the learned trial Judge granting an injunction against the petitioners in a suit for removal of encroachment filed by the respondents (original plaintiffs).

2. With the assistance of the learned counsel for the parties, I have perused the documents annexed to the petition and also to the additional compilation of documents filed by the petitioners.

3. It was the case of the original plaintiffs that the original plaintiffs are the owners of the plot bearing Gat No.802, whereas the defendants claimed to be the owners of plot bearing Gat No.803. It was the case of the plaintiffs that the defendants encroached upon the portion of land of the plaintiffs and started construction thereon.

4. Learned Trial Judge after considering the pleadings and the documents *prima-facie* observed that the petitioners had carried out unauthorized construction by encroaching upon the portion of the land of the original plaintiffs. It is held that the petitioners had also committed breach of the condition imposed by the Grampanchayat while granting permission to the petitioners to carry out construction.

5. Learned District Judge -1 after considering the documents and the pleadings has also rendered *prima-facie* findings of fact that the petitioners had carried out unauthorized construction on the plot of the original plaintiffs by encroaching upon the portion thereof. The suit is at the stage of framing issues. The findings rendered by the two Courts below being not perverse, cannot be interfered with by this Court in this writ petition filed under Article 227 of the Constitution of India.

6. Hearing of the suit is expedited. Learned Trial Judge shall decide the matter on its own merits without being influenced by the observations made by the two Courts below as the same are *prima-*

facie.

7. The writ petition is dismissed with aforesaid terms. There shall be no order as to costs.

Vasant
Anandrao Idhol

Digitally signed by
Vasant Anandrao Idhol
Date: 2018.09.17
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(R.D. DHANUKA, J.)