

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

WRIT PETITION NO.6222 OF 2018

Shri Yashwant Annasaheb Jagtap ...Petitioner

Versus

Shri. Keshavrao Annasaheb Jagtap & Anr. ...Respondents

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Mr.Shivaji S.Bankar i/b. Mr. Devendra B. Sonawane for the
Petitioner.

Mr. Girish R. Agrawal for the Respondents

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 11, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Writ Petition filed under Article 227 of the Constitution of India, is directed against the order dated 9th May, 2018 passed by the learned District Judge-2, Karad in Misc. Civil Appeal No. 16 of 2018 thereby allowing Misc. Civil Appeal No. 16 of 2018.
3. The petitioner/ original plaintiff has filed Regular Civil Suit No. 59 of 2018 for temporary injunction and partition against the defendants. The respondents are defendant nos. 2 and 11. The

application below Exhibit 5 in Regular Civil Suit No. 59 of 2018 was allowed by the learned Civil Judge, Junior Division, Patan on 13th April, 2018 and directed defendant nos. 2 and 11 to stop the construction on the ancestral property, which belongs to the grandfather of the plaintiff and the defendants. However, the respondents i.e., defendant nos. 2 and 11 claimed that it is bequeathed to them i.e., grandsons. The respondents have started construction on that land and, therefore, the petitioner/ original plaintiff has filed the suit for partition and temporary injunction. The Appellate Court has allowed the Misc. Civil Appeal No. 16 of 2018 filed by the respondents/ defendant nos. 2 and 11 thereby quashing and setting aside the order dated 13th April, 2018 passed by the learned Judge of the trial Court. The Appellate Court has passed the following order:-

“2] However, the construction of appellants/ original defendant Nos. 2 and 11 in the suit property shall be subject to final decision in above R.C.S.No. 59 of 2018”.

4. After hearing both the sides, I am inclined to maintain the order dated 9th May, 2018 passed by the learned District Judge-2, Karad. There is specific rider in respect of construction, final decision and direction. It is made clear that the respondents i.e.,

original defendant nos. 2 and 11 shall give written undertaking before the trial Court on the next date wherein they will specifically mention that they shall claim equity against the order allowing them to construct the house and they are bound by the final decision of the Court and proceeds accordingly.

5. With this, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)