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

WRIT PETITION NO.14181 OF 2017

Satu Kondu Kadu and ors	...	Petitioners
V/s.		
Narayan Sakharam Sonar	...	Respondent.

Mr. Nikhil Sakhardande, i/by Pralhad D.
Paranjape, for the Petitioners.
Mr. Hitesh P. Vyas. for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for respondent.

2] By this petition, filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 16.11.2017, passed by District Judge -14, Pune, thereby allowing Misc. Civil Appeal No.298 of 2017, preferred by respondent-defendant, challenging the order dated 3rd August 2017, passed by the learned Civil Judge Junior Division, Vadgaon Maval, thereby allowing Application at Exh.5, for interim injunction filed in Special Civil Suit No.638 of 2017

3] The said suit and application was filed by the petitioners claiming inter alia that they are the owners of the suit property bearing Gat No.476 situate at Kusgaon Budruk, Dist. Pune. However, since year 1991 the suit property is in possession of respondent. Now after demolishing the said construction, respondent has started new construction and hence the respondent should be restrained from carrying out any such construction thereon and possession of the suit property be delivered to the petitioners.

4] This application came to be resisted by respondent-defendant contending inter-alia that he is in possession of the suit property since 1992 and he has become owner thereof by way of adverse possession. Earlier application for temporary injunction filed by petitioners in R.C.S.No.36 of 2017, claiming same relief is already dismissed. Hence, petitioners have no case to get the relief of interim injunction.

5. The trial Court, after considering the submissions advanced by learned counsel for both the parties, however, allowed application for interim relief, thereby restraining respondent from carrying out any further construction till final decision of the suit. However, the appellate Court allowed the appeal and vacated the order of interim injunction granted by trial Court.

6] While challenging the impugned order of the Appellate

Court, submission of learned counsel for the petitioners is that it was not proper on the part of Appellate Court to set aside the well reasoned order of interim injunction passed by the trial Court and to substitute its own discretion in place of the discretion exercised by the trial Court. It is submitted that admittedly respondent-defendant is not having any semblance of title over the suit property. Respondent has come before the Court with a plea of adverse possession, thereby accepting the fact that the title of the suit property is with the petitioners and in such situation, according to learned counsel for petitioners, the impugned order passed by the Appellate Court, vacating the order of interim injunction passed by the trial Court needs to be quashed and set aside.

7] Per contra, learned counsel for respondent has supported the said order, by contending that respondent is admittedly in possession of the suit property since 1992. He is not raising the construction for the first time, but after demolishing the suit construction, he is raising new construction and in such circumstances, as held by the Appellate Court, it would not be proper to restrain him from carrying out any such construction.

8] The perusal of order passed by the Appellate Court, clearly goes to show that the Appellate Court has considered the fact that admittedly respondent is in possession of the suit property since

the year 1992. Even if ultimately decree of possession is passed in favour of petitioners under Section 5 of the Specific Relief Act, 1973, petitioners will be entitled to get the possession of the suit property alongwith construction and therefore, whatever construction respondent is carrying on being at his own risk and peril, there is no reason to restrain respondent from carrying out such construction, especially when admittedly he is in peaceful possession thereof since 1992 and the earlier application for temporary injunction filed by the petitioners in the previous suit was rejected and now also petitioners have failed to make out any case for getting relief of interim injunction.

9] The discretion exercised by the Appellate Court, thus, being based on material on record, in writ jurisdiction, this Court should be slow from interfering in the said jurisdiction. The writ petition, hence, without any merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]