

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9784 OF 2019

PANDURANG HANMANTRAO KULKARNI
VERSUS
BALAJI VALJNATH BELLALE AND ANOTHER

...

Advocate for the Petitioner : Shri Garud N.C.
Advocate for the Respondents : Shri Golewar V.P.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th November, 2019

Per Court:

1 This matter was heard extensively on 04.11.2019 and today.

2 The petitioner/ original plaintiff in Regular Civil Suit
No.89/2018 was granted temporary injunction by the order dated
09.01.2019 below the application exhibit 5 by the Trial Court and the
defendants were directed not to interfere and obstruct the peaceful
possession of the plaintiff over the suit property till the decision in the
suit.

3 The grievance of the plaintiff is that after the defendants
moved Miscellaneous Civil Appeal No.2/2019 before the Appellate Court
for challenging the order of temporary injunction, the Appellate Court has
allowed the appeal vide the impugned judgment dated 22.02.2019 and
has quashed and set aside the injunctory order passed by the Trial Court.

4 Considering the order that I intend to pass in view of the consensus between the parties, I am not required to advert to the entire submissions of the plaintiff and the defendants.

5 The record reveals that the plaintiff is in the process of constructing a home on the suit property. The RCC construction upto the basement level has already been erected by the plaintiff and the centring work for erecting columns is in progress. This aspect is not disputed by the defendants.

6 I had called upon the plaintiff to enter an affidavit undertaking that if the defendants succeed in the civil litigation, the plaintiff would handover the vacant plot to the defendants or along with the construction erected thereon, if the plaintiff desires to proceed with the construction during the pendency of the suit. The learned advocate has taken instructions from the plaintiff and submits today that he has already invested about Rs.4 lakhs in the partial construction that has been done and being a labourer with meagre source of income, he would not like to take the risk of constructing further.

7 Considering the above, I find it equitable to direct the defendants to refrain from dealing with the suit property and from creating third party interest or encumbrances in view of the statement of the plaintiff that he would halt the construction to avoid the risk.

8 Normally, the suit as fresh as Regular Civil Suit No.89/2018 is

not to be expedited. However, it is in the peculiar facts as recorded above and keeping in view that the plaintiff is a labourer, who is about 67 years of age and the defendants are couple, who indulge in agricultural activities, that the suit lodged in 2018 could be expedited.

9 In view of the above, this Writ Petition is disposed off with the following directions :-

- (a) The plaintiff would not proceed with further construction in view of the statement made.
- (b) The defendants would not deal with the suit property or create any third party interest or encumbrances on the suit property.
- (c) The contentions of the parties that the plaintiff claims to be in possession of the suit property from 1980 and that the defendants are the legal owners of the suit property, would be subject matter of adjudication in the pending suit.
- (d) RCS No.89/2018, as per the statement of the learned advocates for the respective sides being at the stage of recording of evidence, is expedited and the Trial Court would endeavour to decide the said suit as expeditiously as possible and preferably on or before 31.12.2020.