

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6565 OF 2018

TRIMBAK MHATARBUWA YADAV
VERSUS
FULCHAND BHAGWAN NAIKWADE AND OTHERS

Advocate for Petitioner : Mr. S.J. Salunke.
Advocate for Respondent Nos. 1 to 28 : Mr. N.R. Thorat.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 27.03.2019

PER COURT :

1. The petitioner/original plaintiff in RCS No. 144/2018, is aggrieved by two orders. Firstly, that his application seeking temporary injunction Exhibit 5 has been rejected by the order of the Trial Court dated 26.04.2018. Secondly, his MCA No. 21/2018 has been dismissed by the appellate Court by judgment and order dated 11.06.2018.

2. This Court (Coram : Sunil P. Deshmukh, J.) has passed an order on 27.06.2018, directing the parties to maintain status quo in respect of the suit property.

3. Since the suit is pending and as I am passing a conditional order, I am not required to advert to the entire pleadings of the litigating sides before the Trial Court and as they were canvassed

before the appellate Court. Suffice it to say that the plaintiff is aggrieved by the encroachment made by the defendant villagers in the form of erecting a temple of Lord Hanuman, on such portion of the government land which is in front of the residence of the plaintiff and which also encroaches on his easementary right by necessity. His plaint does not contain the aspect of the erection of the temple since there was no temple when he has lodged his suit.

4. Shri Salunke, submits that he, therefore, be granted a liberty to move before the trial Court for filing an application seeking addition of a prayer and pleadings based on subsequent events. I find that the plaintiff will have such right under the Code of Civil Procedure, unless there is any legal embargo or impediment, which I do not find at this stage.

5. The short issue before this Court is as to whether the easementary right by necessity purportedly available to the plaintiff could be impinged by the subsequent events or by the acts alleged to have been committed by the defendants.

6. The defendants submit that they have not caused any encroachment on government land. The temple is erected on a portion which would leave sufficient land available to the plaintiff for

his use, as before. The three colour photographs at page Nos. 118 and 119 are pointed out which would indicate sufficient width of the concrete road adjacent to the temple which the plaintiff can use as his Cart way or for his vehicular movement.

7. *Ex-facie*, I find that he can use the said width of the road even for plying a tractor. I am making these observations in view of the contention of the plaintiff that the defendants have erected the temple despite ad-interim injunctory orders and for which purpose he has filed the Contempt Petition No. 640/2018. By these observations made in this order, I am recording the space available for utilization of the plaintiff. This would rule out further encroachment or construction reducing the width of the said road as is visible from the three colour photographs.

8. Learned advocate for the respondent fairly submits that no further structure would be erected without the leave of the Trial Court or such Court where any proceeding is pending. He, further, adds that during the *Saptah* (seven days of religious rites) which occurs approximately twice a year in the month of *Shravan Maas* and *Chaitra Maas*, there would be a gathering of devotees and tents would be erected.

9. I find that such religious expression need not be curbed at an interim stage. In this Country of religious people, I do not find it appropriate to direct the defendant that he should not hold such *Saptah*. However, such *Saptah* can be controlled by ensuring that the villagers will not block the entire path which is used by the plaintiff which would virtually lock him in his land and house. As such, a day prior to the *Saptah*, they may erect the shed for protecting the devotees from heat and rain. Such sheds which would be erected, shall be removed immediately after the *Saptah* is over, without any pretext.

10. The impugned orders, therefore, stand merged in the above directions. The above directions shall be subject to the result in the civil litigation before the parties.

11. This petition, is therefore, disposed off in terms of the said directions.

(RAVINDRA V. GHUGE, J.)