

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

**935 CIVIL APPLICATION NO.10655 OF 2017
IN
SECOND APPEAL NO.543 OF 2017**

**NARSING NIVRUTTI PATIL AND OTHERS
VERSUS
VISHWAJEET RAJKUMAR PATIL AND ANOTHER**

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Mr. J.R. Patil, Advocate for the applicants
Mr. M.D. Shinde, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10th JULY, 2019

PER COURT :

1 Heard both sides. The Second Appeal is admitted. It may come up for final hearing at its turn. It has been submitted that application Exh.5 for temporary injunction was allowed by Trial Court on 17.06.2013. But thereafter the said order was challenged before the District Court in Misc. Civil Appeal. It appears that the said appeal was allowed and the order passed by the Trial Court was set aside. The said order in Misc. Civil Appeal was challenged in this Court in Writ Petition No.3805 of 2014. The said writ petition was decided by this Court on 06.05.2014 and following order is passed.

“12. The writ petition is, therefore, partly allowed and the impugned order dated 29.03.2014 passed in Misc. Civil Appeal No.46/2013 is modified as follows :

(a) The area of land between the fencing and the Hanuman Temple can be utilized as a cremation ground, as has been stated, by way of an interim measure.

(b) Both the parties would maintain status-quo as regards the agricultural field on the East side of the fencing.

(c) The learned Trial Court is directed to decide R.C.S. No.79/2012, as expeditiously as possible, and on or before 30.09.2014.

(d) Both the sides assure that no adjournments for unjustified reasons would be sought and would extend co-operation to the Trial Court for expeditious disposal of the civil suit.”

2 It appears that the said order continued till the disposal of the suit. Thereafter, the appellant-original plaintiff had filed application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure in R.C.A. No.175/2014. Except the order of issuance of notice to the other side only one order came to be passed on 30.09.2015 stating that since the adjournment application was rejected, the application Exh.5 is kept along with the appeal. Thus, it can be said that the operation of order in Writ Petition was limited to the disposal of the suit and in appeal i.e. appeal

challenging the Judgment and Decree dismissing the suit, interim order was in favour of the original plaintiff. Yet, in view of the appeal is allowed, the injunction would have started from the Judgment and Decree passed by the First Appellate Court. Since the Second Appeal is admitted, it would be in the interest of justice to both the parties to pass similar order to the Writ Petition as aforesaid, which was then prevalent till the end of the suit. Hence, following order.

ORDER

- 1 The application is partly allowed.
- 2 The area of land between the fencing and the Hanuman temple can be utilized as a cremation ground till the final hearing and decision of the Second Appeal.
- 3 Both the parties would maintain status-quo as regards the agricultural field on the East side of the fencing.
- 4 Accordingly application is disposed of.

(Smt. Vibha Kankanwadi, J.)