

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

WRIT PETITION NO. 12434 OF 2018

**LATA MAHADEV JANGAM
VERSUS
PREMCHAND SHIVNAYAK YADAV**

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Advocate for the Petitioner : Shri Shaikh M. A. Jahagirdar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th APRIL, 2019.

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PER COURT :

1. The petitioner - original plaintiff is aggrieved by the concurrent findings of the Trial Court as well as the Appellate Court, by which, the rejection of the application for temporary injunction Exhibit 5 in RCS No. 43/2018, has been sustained.

2. The learned Advocate for the petitioner contends that she is a member of the Cooperative Society. There is an approved plan for the land belonging to the Cooperative Society. The layout of the plot was submitted for approval and the Shrirampur Municipal Council has approved the same.

3. As per the approved plan, some areas were reserved for internal roads, compulsory open space, a meeting hall and a Shiva Temple. It is conceded that the society did not get registration. The members of the society had purchased the plots individually from Digambar Nagarkar.

4. The plaintiff contends that she has purchased the plot No. 15 in the proposed lay out from Asha Vilas Jangam vide registered sale deed dated 18/02/1995. She has constructed a house on the said plot. The defendant and his family members were creating an obstruction and had started encroaching upon her plot. Cattle sheds were raised and cows and buffaloes were housed in the cattle sheds. She, therefore, preferred RCS No. 12/2006 seeking perpetual and mandatory injunction which was dismissed by the Trial Court. The Appellate Court decreed the suit and this Court sustained the decree in Second Appeal No. 301/2014.

5. The contention of the plaintiff is that a Pooja room and temple of Lord Shiva has been earmarked and the place was given by the original owner to the Veershaiv Samaj Trust. The

defendant has caused an encroachment by construction of cow sheds in the suit land. Hence, the plaintiff preferred RCS No. 43/2018.

6. My attention is drawn to the nine grounds formulated by the petitioner in the memo of the petition. Contention is that the defendant should be restrained from erecting any construction. An irreparable harm will be caused to the plaintiff if such a construction is permitted. The Trial Court has committed an error in rejecting the T.I. Application and the Appellate Court has committed an error in dismissing the Appeal filed by the plaintiff.

7. I find from the observations of the Trial Court in the interlocutory order dated 21/03/2018 that the defendant has purchased the suit land. Though at a *prima facie* stage, it cannot be held that he has illegally purchased the land, the name of the defendant is entered in the suit property vide mutation entry No. 10171, which cannot be ignored. There are 22 persons who have purchased different plots. Though the plaintiff alleges that the sale transaction is illegal, no

declaration is sought that the sale deed be declared as illegal. No relief is sought against the said transaction.

8. In Second Appeal No. 301/2014, this Court has delivered an order on 29/07/2015. In paragraph 3 of the order, this Court has recorded that the same defendant has purchased remaining plots from individual members. The defendant and his family members have developed a house on one of the plots. Cattle sheds are erected on other plots purchased by them and they are rearing buffaloes. It was also recorded that this plaintiff had only raised an issue of encroachment on internal roads. Equity demanded that the defendant would not violate the arrangement of the roads as per the scheme. This Court, therefore, concluded that the defendant would be under an obligation to permit the plaintiffs to access the internal roads.

9. In the present suit, that is RCS No. 43/2018, the plaintiff is raising an issue of cattle sheds being erected by defendant. These cattle sheds were already erected when RCS No. 12/2006 was filed. In that suit, the plaintiff did not raise a

grievance about the erection of the cattle sheds, though it was mentioned in the plaint that cattle sheds are erected and the roads are being blocked by the defendant.

10. As such, in RCS No. 43/2018, the Trial Court will have to deal with an issue as to whether, the non raising of a cause of action, as in 2006, when the cattle sheds were erected, would amount to voluntarily waiving such a cause of action and would be an impediment in the 2018 suit under Order II Rule 2 of the CPC.

11. Considering the above, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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