

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

WRIT PETITION NO.5386 OF 2016

SAYANNA S/O GANGARAM BATTIN AND ANR
VS
PRAKASH S/O ROOPA GAVALI AND ORS.

...
Mr.H.I.Pathan, Adv. For petitioners;
Mr.RK Ingole, Adv. For Resp.No.3.

CORAM : P.R. BORA, J.
DATED : 5th April, 2019.

PER COURT:-

1. Heard Shri Pathan, learned counsel for petitioners. Perused the impugned order.

2. Admittedly, the present petitioners were not parties to Regular Civil Suit No.981/2000. It is the contention of the petitioners that on their complaint, notice was issued by Respondent No.3 - Nanded Waghala Municipal Corporation against the respondents directing them to demolish the unauthorized construction, which they have carried out. It is the further contention of the petitioners that the said unauthorized construction, which has been carried out by the respondents, has prejudicially affected the ventilation of the house belonging to the present

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petitioners. In the circumstances, it is the contention of the petitioners that they need to be permitted to file an appeal against the judgment and decree passed in the aforesaid civil suit.

3. The learned counsel further submitted that the petitioners were bonafide believing that since notice has been issued by the Corporation at their instance, they need not to initiate separate action against the respondents. The learned counsel further submitted that even in the earlier round of litigation the High Court has given such liberty in favour of the petitioners to resort to appropriate alternate remedy, which the petitioners have availed by filing an appeal against the decree passed in the aforesaid Regular Civil Suit and in the circumstances, time has been consumed in doing so. The learned counsel submits that in the circumstances, the delay which has occasioned may come in their way if they decide to file a separate suit.

4. Upon perusal of the order, it appears that the courts below have properly considered the

arguments, which have been advanced by the learned counsel for the petitioners before this court. I deem it appropriate to reproduce herein below the discussion made by the learned appellate court in para 10 and 11 of its judgment, which reads thus,

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"10. According to Sec.96 the parties have right to file appeal from original decree. An appeal u/sec. 96 of Civil Procedure Code may be preferred by any party to the suit adversely affected by the decree, or if such party is dead, by his legal representative, any transferee of the interest of such part, who, so far as such interest is concerned, is bound by the decree, provided his name is entered on the record of the suit, an auction-purchaser may appeal from an order in execution setting aside the sale on the ground of fraud. No person, unless he is party to the suit, is entitled to appeal under this section. But a person who is not a party can appeal with the leave of the appellate court, if he would be prejudicially affected by it and if the decree will be binding on him as *resjudicata*. The test to determine whether a person is aggrieved by a decision is whether it is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or the other.

11. The Regular Civil Suit No.981/2000 filed by respondents No.1 and 2 against respondent No. 3 was for perpetual injunction and

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declaration. As discussed in supra the trial court decreed the suit to the extent of perpetual injunction and refused the relief of declaration. According to applicants their house and the house of respondent No.1 and 2 are adjacent to each other. Respondents have carried unauthorized construction and their ventilation and easementary right severally effected. Applicants have preferred an applicant to the municipal corporation but municipal corporation did not take any action. By the said decree they prejudicially effected. It is to be noted that the respondents have initiated the suit against respondent No.3 after issuance of the notice u/sec. 53 and 54 of the Maharashtra Regional Town Planning Act. Thus the dispute was between respondent No.1 and 2 on one side and respondent No.3 on the other. I have perused the decree it appears that by the said decree applicants are not prejudicially effected. There is no finding against the applicants in the said decree. The only contention of the applicant is that by way of such unauthorized act of construction of respondents, their easementary right is effected. Applicants have remedy to file a separate suit in respect of their easementary right. Therefore applicants are not entitled for permission to filed third party appeal."

5. After having gone through the observations and the findings recorded by the court, it does not appear to me that any case is made out for causing any interference in the

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impugned order. It has to be stated that a very reasoned order has been passed by the trial court and the relevant legal position has been correctly analyzed by the courts below. The first appellate court has also clarified that if the petitioners have some grievance, remedy lies elsewhere and they can certainly resort to appropriate remedy for redressal of their grievance.

6. The petition stands disposed of with the above observations.

(P.R. BORA)
JUDGE

BDV