

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14644/2018

Vishnu Kashiram Tulaskar

... Petitioner

V/s.

Chetan Arun Samant & Ors.

... Respondents

Mr. Abhishekh B. Shukla I/b .B. S. Shukla for the Petitioner
Mr. Prashant Bhavake for Respondent No.1.

CORAM: K.K. TATED, J.

DATED : JANUARY 8, 2019

P.C. :

1 Heard. Adv. Bhavake states that he received instructions to appear on behalf of Respondent No.1. He undertakes to file vakalatnama within a week. The undertaking is accepted.

2 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 09.10.2018 passed by the learned Civil Judge, Junior Division, Vengurla below Exhibit- 33 in Regular Civil Suit No. 28/2018 allowing the Respondent – Plaintiff's Application for mandatory direction to remove the obstruction through the Bailiff of the Trial Court.

3 The learned counsel for the Respondent No.1 - Plaintiff submits that said order was challenged by the original Defendant No.1 Mangesh Lavu Tulaskar before the learned District Judge, Sindhudurg at Oros being Misc. Civil Appeal No.49/2018. He

submits that the said appeal is allowed by the District Judge by judgment and order dated 01.01.2019 and set aside the order below Exhibit- 33 in Regular Civil Suit No. 28/2018. The operative part of the said order reads thus:

“1. The appeal is allowed.

2. The order below exh.33 in RCS No.28/2018 passed by Ld. Trial Court is hereby set aside and application at Exh.33 stands rejected.

3. If Plaintiff implead all the co-owners of Survey No.41, Hissa No.1 (servient property) in a suit before Trial Court i.e. RCS No.28/2018, then liberty is granted to Plaintiff to file fresh application for interim relief. In that case, Ld. Trial is at liberty to pass appropriate order including ad interim order as he thinks fit.”

4 The learned counsel for the Respondent No.1 placed on record a copy of order dated 01.01.2019. Same is taken on record and marked “X” for identification. He submits that in view of the subsequent development, nothing survives in the Writ Petition.

5 Heard both sides. It is to be noted that the order impugned in the Writ Petition has already been set aside by the District Judge by order dated 01.01.2019. Hence, nothing survives in the Writ Petition.

6 The Writ Petition stands dismissed as infructuous. No order as to costs.

(K. K. TATED, J.)