

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10801 OF 2016

Sunil Maruti Karve & Ors.

..Petitioners.

V/s.

Pandurang Rama Karve & Ors.

..Respondents.

Mr.Vishwanath S.Talkute for the petitioners.

Mr.D.D. Rananaware for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

ORAL JUDGMENT

Heard Mr.Talkute, learned counsel for the petitioners and Mr.Rananaware, learned counsel for the respondents.

2. Challenge in this petition is to the order dated October 1, 2015 made by the Appeal Court allowing the respondents' appeal and setting aside the trial Court's injunction order restraining the respondents from proceeding with the construction of their house portion on the suit property bearing Survey No.59/14.

3. Mr.Talkute, learned counsel for the petitioners submits that

admittedly the suit property is a joint property of the petitioners and the respondents. He submits that the petitioners had not consented to the respondents undertaking any construction in the joint property. He submits that if the respondents are permitted to proceed with the construction, then, it will virtually amount to forcible partition of the suit property. He, therefore, submits that the trial Judge rightly enjoined the respondents and the Appeal Court should not have interfered with the injunction order. For all these reasons, Mr.Kalkute submits that this petition may be allowed and the impugned order made by the Appeal Court be set aside.

4. Mr.Rananaware, learned counsel for the respondents submits that the petitioners have already constructed their own house in the joint property. He submits that the respondents are putting up a small construction admeasuring 1000 sq. ft. in the maximum. He submits that the total area of the joint property is 2 H. 50 R. He submits that the construction of the suit house is almost eighty per cent complete. In these circumstances, Mr.Nananaware submits that the balance of convenience is entirely in favour of the respondents. On this ground, he submits that the petition may be dismissed.

5. The rival contentions now fall for my determination.

6. There is no dispute that the respondents are co-owners in respect of the suit property. The suit construction was at advanced stage when the respondents were injuncted from proceeding further. The area of construction is to be not more than 1000 sq. ft. and the property Survey No.59/14 itself admeasures 2 H. 50 R.

7. The Appeal Court in the impugned order, has also made it clear that respondent No.3 will have to file an undertaking that in case the suit is decreed and the suit structure is ordered to be demolished, than, respondent No.3 would comply with such order of demolition without claiming any equity in the matter.

8. According to me, the balance of convenience is in favour of the respondents. The irreparable prejudice which will occasion to the respondents if injunction is granted far outweighs the relief which the petitioners would obtained if the injunction had been refused. On this short point, the impugned order made by the Appeal Court is required to be sustained and additional conditions required to be imposed upon respondent No.3.

9. The additional conditions are necessary, because, the finding of the Appeal Court that respondent No.3 has deemed permission do not appear to correct. Respondent No.3 will have to

obtain permission from the concerned authorities like the Panchayat and the Joint Planning Authority before respondent No.3 proceeds with the construction any further. Besides, respondent No.3 will have to also obtain occupancy certificate before respondent No.3 proceeds to occupy the structure in question, once it is completed.

10. The aforesaid means that though this Court is not interfering with the order of the Appeal Court. Respondent No.3 cannot straightaway proceed with the construction. The construction can proceed only after obtaining necessary permission as aforesaid.

11. Besides, respondent No.3 will have to file an undertaking before the trial Court that in case the suit is decreed and there is a direction for demolition, respondent No.3 will comply with the said directions, subject no doubt, to the right of appeal or such other remedy as respondent No.3 might have. However, the undertaking to state that the respondents will not claim any equities in the matter. Learned trial Judge also not be influenced by the fact that leave is granted to put up construction in question.

12. With the aforesaid observations, this petition is disposed of. There shall be no order as to costs.

13. Learned trial Judge is directed to dispose of the suit as

expeditiously as possible on its own merits and in accordance with law without being influenced by the observations in orders made by the trial Court, Appeal Court and for that matter by this Court on the issue of interim relief.

14. At the request of learned counsel for the parties Regular Civil Suit No.338/2015 i.e. the present suit should be tagged with Special Civil Suit No.89/2015 and both the suits to be disposed of as expeditiously as possible on their own merits. Learned counsel for the parties point out that the later suit is for partition.

15 All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)