

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2109 OF 2019

Atul s/o Subhash Tale and ors.

-vs-

Utkarsh s/o Kailas Tale

WITH

WRIT PETITION NO.2040 OF 2019

Ramesh s/o Trambakrao Tale, Thr. His Special POA Atul s/o Subhash Tale

-vs-

Utkarsh s/o Kailas Tale and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. V. Sohoni, Advocate for petitioners.

Shri M. G. Sarda, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : April 05, 2019

Heard.

The petitioners are aggrieved by the order passed by the appellate Court on 11/02/2019 in Misc. Civil Application Nos.86/2017 and 87/2017. By that order the appellate Court has directed the trial Court to decide the application filed below Exhibit-5 in the two suits bearing R.C.S. Nos.47/2017 and 53/2017 afresh.

2. In R.C.S. No.47/2017 subject matter is land concerning Gat Nos.269 and 331 and in R.C.S. No.53/2017 land with regard to Survey No.270 is in question. In both the suits the respective plaintiffs had

filed applications for grant of temporary injunction. The trial Court considered both the applications together and granted injunction in R.C.S. No.53/2017. The application in R.C.S. No.47/2017 was rejected. Hence two appeals came to be filed and as noted above the appellate Court has directed fresh consideration of both the applications.

3. After hearing Shri S. V. Sohoni, learned counsel for the petitioners and Shri M. G. Sarda, learned counsel for the respondents it is found that the appellate Court was justified in directing fresh consideration of the applications for temporary injunction. It was noted by the appellate Court that only the facts in R.C.S. No.53/2017 was considered and the facts with regard to R.C.S. No.47/2017 were not referred to. Though it is submitted on behalf of the petitioners that the absence of an order of consolidation of both the suits has weighed with the appellate Court, said aspect alone is not found relevant. The appellate Court has observed from paragraphs 29 to 42 in its order that relevant material with regard to the respective suits was required to be considered independently as the subject matter of both the suits was different. Hence I do not find any jurisdictional error committed by the appellate Court in directing fresh consideration of the temporary injunction applications by the trial Court.

4. By observing that the trial Court shall decide the said applications on their own merits and in accordance with law, both the writ petitions stand dismissed with no order as to costs.

JUDGE