

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.3720/2016**

Shri Suresh S/o Gulabrao Dhoble and others ..Vs.. Shri Vishwanath S/o  
Krushna Takalkhede and another

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri S.P. Bhandarkar, Advocate for the petitioners.  
Shri Masood Shareef, Advocate for respondent Nos.1 and 2.

**CORAM : Z.A. HAQ, J.**

**DATE : 28.2.2019.**

The petitioners (original plaintiffs) have filed the Regular Civil Suit No.762/2015 praying for decree for declaration that defendants (respondents in this petition) have no right, title and interest in the suit land. According to the plaintiffs, the defendants are illegally and unauthorizedly disturbing the possession of plaintiffs over the suit property and, therefore, the plaintiffs have claimed decree for permanent / perpetual injunction restraining the defendants from disturbing the possession of the plaintiffs over the suit land. The plaintiffs have amended the plaint and have prayed for decree for declaration that the description of the boundaries of land bearing Survey No.175 as shown in the sale-deed dated 20<sup>th</sup> September, 2013 executed amongst the defendant Nos.1 and 2 is illegal and incorrect and not as per the actual ownership and possession of the defendants. The plaintiffs have also prayed for decree for declaration that the land bearing Khasara No.175 (new) is situated towards the eastern side of the land bearing Khasara No.174 (new) of Mouja Lonara.

The proceedings regarding mutation of entries in the revenue records were simultaneously going on. The Commissioner passed order on 9<sup>th</sup> July, 2015. The plaintiffs amended the plaint after the learned Commissioner passed order in favour of the defendants. The order passed by the learned Commissioner in proceedings regarding mutation of entries in revenue records is also challenged before this Court by the petitioners in Writ Petition No.4584/2015, and in this petition "Rule" is issued.

In the civil suit, the plaintiffs had filed an application praying for temporary injunction. By order dated 28<sup>th</sup> September 2015, the trial Court decided the application (Exh. No.5) filed by the plaintiffs. The learned trial Judge restrained the plaintiffs as well as defendants from creating nuisance for each other and obstructing each other. The learned trial Judge restrained the plaintiffs as well as defendants from undertaking any construction or development activities on the disputed portion of the property till the disposal of the civil suit. The learned trial Judge also restrained the plaintiffs as well as defendants from creating any third party interest in Survey No.174 and Survey No.175 and from changing nature of those properties. This order was challenged by the petitioners / plaintiffs before the District Court in two separate appeals. The appeals are decided by the impugned judgment. The learned District Judge has set aside the order passed by the trial Court on the application (Exh. No.5) and has dismissed the

application (Exh. No.5).

The plaintiffs are claiming that the suit property is Survey No.174 and is owned by them. According to the defendants, though Survey No.174 belongs to the plaintiffs, the boundaries of the property shown by the plaintiffs in the plaint are not correct and some portion of Survey No.175 owned by the defendants is covered by the boundaries shown in the plaint.

Considering the nature of controversy and the disputed facts which cannot be adjudicated at this stage and which will have to be adjudicated only after full-fledged trial, in my view, the order passed by the learned trial Judge restraining the plaintiffs as well as defendants from undertaking any construction or any development activities, and from creating any third party interest in Survey No.174 and Survey No.175 till the decision of the civil suit, was just and proper.

In view of the above, following order would sub-serve the ends of justice:

The trial Court shall dispose the civil suit till 30<sup>th</sup> September, 2019.

Till the disposal of the civil suit, the parties shall not undertake any construction or any development activities or shall not create any third party interest in Survey No.174 and Survey No.175 of Mouja Lonara.

The writ petition is **disposed** in the above terms. No costs.

JUDGE