

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

WRIT PETITION NO.8182 OF 2019

ANIL ANKUSH JAGDALE AND ANOTHER
VERSUS
MANGESH JAGDSH VARMA

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Advocate for Petitioners : Mr. Bora Satyajit S.
Advocate for Respondents : Mr. Patil Atmaram J

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CORAM : V.K. JADHAV, J.
Dated: February 28, 2020

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PER COURT :-

1. Heard finally with the consent of the parties,
at admission stage.

2. The petitioners are the original defendants.
Respondent/original plaintiff has instituted the suit
simplicitor for perpetual and mandatory injunction in
respect of the suit property. Pending the suit,
respondent/plaintiff had filed an application Exh.15
under Order 11, Rule 14, 15 and 16 of Civil Procedure
Code directing the petitioners/defendants to produce
the documents as detailed in paragraph no.3 of the said
application. The respondent/plaintiff has strongly

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resisted the said application by filing say at exh.25. By order dated 11.6.2019 below Exh.15 the Trial Court has allowed the said application. It further appears that at the same time, the petitioners/defendants have filed the application Exh.27 contending therein that the application Exh.15 has been prematurely filed by the respondent/plaintiff and said application exh.15 be kept in abeyance till the respondent/plaintiff adduced the evidence in support of his pleadings. By impugned order dated 10.6.2019 below Exh.27 the Trial Court has rejected the said application. Hence, this writ petition.

3. Learned counsel for the petitioners/defendants submits that the respondent/plaintiff has instituted the suit simplicitor for perpetual injunction and mandatory injunction. The plaintiff is seeking said relief on the basis of the infringement of his easementary rights in connection with light and air. Learned counsel submits that unless and until respondent/plaintiff substantiate his pleadings by way of oral and documentary evidence, the aforesaid

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discovery is premature one, however, the Trial Court has allowed the application filed at exh.15 and rejected the application exh.27 erroneously. Learned counsel appearing for the petitioners/defendants submits that respondent/plaintiff has filed an application for adding the Corporation as party/defendant and, as such, the documents as sought can be produced on record at the later stage, if so needed.

4. Learned counsel for respondent/plaintiff submits that so far as the application Exh.15 is concerned, the petitioners/defendants have no objection for production of those documents. Learned counsel submits that the documents as sought by way of the application Exh.15 are essential for determination of the issue of the easementary right on the suit property. The documents regarding the application made to the Municipal Corporation for building construction permission, approved construction plan, receipt of betterment and development charges are sought to be produced. The Trial Court has, therefore, rightly

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allowed the application Exh.15 and rejected the application Exh.27.

5. It appears that so far as the application Exh.15 is concerned, in paragraph no.3 of say to Exh.15 petitioners/defendants have no objection for the same and it has been contended that the construction consultant of the petitioner/defendant is on summer vacation and, as such, the documents as sought by way of application exh.15 could not be produced before the Court forthwith. However, in paragraph no.4 the petitioners/defendants have contended that the suit is not instituted seeking declaration in respect of the construction permission and as such those documents are not necessary to be produced on record. Though, the suit has been instituted for a decree of perpetual injunction and mandatory injunction, the same is in terms of the pleadings in respect of the alleged infringement of the easementary rights. Though, respondent/plaintiff has filed an application for impleading the Corporation as party defendant in the

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suit, however, the documents as sought by way of filing an application Exh.15 are necessary for the just disposal of the suit. I do not think that the application Exh.15 has been prematurely filed. I find no fault in the orders passed by the Trial Court. There is no substance in this writ petition. Hence, I proceed to pass the following order.

O R D E R

Writ Petition is hereby dismissed.

(**V.K. JADHAV, J.**)

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