

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

WRIT PETITION NO. 2764 OF 2018

Manoj S/o Munnalal Chaube and others

...Versus...

Premprakash S/o Laxminarayan Newale

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

Court's or Judge's orders

Shri K.S. Motwani, Counsel for petitioners
Shri S.W. Ghate, Counsel for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/02/2020

Heard Shri Motwani, learned Counsel for the petitioner, the original defendant and Mr. Ghate, learned Counsel for the respondent/original plaintiff. In a suit for declaration and injunction as filed by the present respondent, the Trial Court by an order dated 03/09/2016, allowed the application and restrained the defendants, their agents, servants or anybody claiming on their behalf from making any type of construction over the suit property, without due process of law till final decision of the suit. The Appellate Court by its judgment dated 21/04/2018, has maintained the order of the Trial Court.

It is contended, that there is a temple of Lord Hanuman on the land, of plot No. 884, owned by the

plaintiff, by virtue of a sale-deed dated 30/12/1978. The ownership of the property, by the original plaintiff, is not disputed. The plaintiff also does not dispute the existence of the temple and its access to the public at large. The attempt of the defendants to erect a wall around the temple, thereby bifurcating the property of the plaintiff has been injuncted by the Trial Court. In light of the admitted position, that the property is owned by the plaintiff by virtue of the sale-deed dated 30/12/1978, and the admission of the defendants in their written statement specifically in paragraph Nos. 5 and 6, the issue regarding permissibility of construction of a wall around the temple, at the behest of the defendants, would be one, which has to be decided not at the stage of Exh.5, but during the course of the trial. In that light of the matter, I see no reason to interfere to the impugned order and judgment. There is no merit in the petition, and the same therefore, is dismissed with no costs.

However, considering the nature of the dispute, the Trial Court is directed to decide the suit expeditiously, and in any case, within a period of 12 months from the receipt of this order.

JUDGE