

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

WRIT PETITION NO.2573 OF 2020

**SANTOSH LAXMAN CHAVAN AND ANOTHER
VERSUS
RUPESH RAMANDAS PAREKH AND OTHERS**

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Advocate for Petitioners : Mr. Rahil R. Kazi h/f Mr. Anuj Fulfagar And
Mr. P. R. Katneshwarkar

Advocate for Respondent No.1 : Mrs. Charuta S. Deshmukh

Advocate for Respondent Nos. 4 to 4E : Mr. A. S. Jadhav

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th DECEMBER, 2021

PER COURT :

1. This petition challenges order dated 09-12-2019, passed by the District Judge-10, Ahmednagar, below application Exhibit-8 in Regular Civil Appeal No.368/2019, thereby rejecting the application filed by the petitioners seeking stay to the judgment and decree passed in favour of respondent No.1 – original plaintiff in Regular Civil Suit No.121/2013. The said suit was filed seeking perpetual injunction in respect of the suit property bearing C.T.S. No.2895, Municipal Corporation No.7194, admeasuring 123.34 Sq.Mtr., (for short 'suit property'). The suit was resisted by the defendants. The trial Court partly decreed the suit. It was declared that the suit property is owned and possessed by respondent No.1 – original plaintiff and respondent

No.4 – original defendant No.3 Trust has no right, title or interest in the said property. Permanent injunction was granted against respondent No.4 – original defendant No.3 Trust that they should not interfere in the peaceful possession of respondent No.1 – original plaintiff.

2. Being aggrieved by the said decree, petitioners – original defendant Nos. 3A and 3F filed Regular Civil Appeal No.368/2019, challenging the judgment and decree passed by the trial Court. In the said appeal, application at Exhibit-8 was filed seeking stay to the trial Court's judgment and decree. After hearing the parties, the appellate Court has rejected the stay application. The said order is impugned in the present petition.

3. Heard rival submissions of the learned advocate for petitioners, learned advocate for respondent No.1 and the learned advocate for respondent Nos. 4 to 4E. Perused the documents filed along with the writ petition.

4. It is clear from the sale deed executed in favour of respondent No.1 – original plaintiff that the property purchased by him was having compound wall from all the sides, access to him is from North direction through lane. It is not shown in the sale deed that there is a lane dividing entire city survey number in two parts because of lane

running from South to North. It appears that, to the South, there is part of C.T.S. No.2895 belonging to petitioner No.2 – Laxman Ganpat Chavan.

5. The sale deed executed in favour of petitioner No.2 – Laxman Ganpat Chavan shows that he has purchased some portion of shrine of Nath Maharaj which comprises of two storeyed rooms from Southern side, which has access from Western lane. The structure of the building is East-West 21 ft. and North-South 21 ft. As per this sale deed, petitioner – Laxman is having access from West side of his property and the lane is kept common for cleaning purpose. Thus, as per this sale deed also, the petitioners – appellants are not having access from North side of the disputed city survey number.

6. After taking into consideration the map Exhibit-63 the appellate Court concluded that the petitioners – appellants failed to make out prima facie case that they do not have access to their portion of property. The appellate Court, after considering the material placed on record, has rightly come to the conclusion that there is no balance of convenience in favour of the appellants and the appellants have failed to make out prima facie case. The appellants are not likely to suffer any irreparable loss if stay is refused to them. The appellate Court was

justified in arriving at the said conclusion.

While rejecting the application filed by the appellants, the appellate Court has protected the interest of the appellants by observing that “the appellant shall have no restrictions to access their property from Southern side lane ending at shrine area”.

7. No illegality or perversity is found in the impugned order. The petition is, therefore, dismissed with no costs.

(NITIN B. SURYAWANSHI, J.)