

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1682 OF 2018**

Manik Tukaram Khot and Ors. Petitioners.
V/s
Shivram Andu Khot and Ors. Respondents.

Mr. Vaibhav R. Gaikwad for the Petitioners.
Mr. Nikhil N. Pawar for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] This Petition is by the Defendants in Regular Civil Suit No.516 of 2015 which is for simplicitor injunction.

2] Application-Exhibit-6 for grant of injunction moved by the Respondents/Plaintiffs came to be allowed vide order impugned dated 18/1/2017 which order, at the behest of the Petitioners, was confirmed in Misc Civil Appeal No.11 of 2017 by the learned District Judge. As such, this Petition.

3] The contentions are, the property bearing Survey Nos. 70, 71, 69 and 68 are owned by the Petitioners/Defendants and on the West

side of Plot Nos. 70 and 71, there lies a common lane which is given Survey No.72. According to Respondents/Plaintiffs, the Petitioners have made encroachment by extending the boundaries of Plot No.70 and are trying to carry out the construction.

4] Both the courts below have concurrently held that proceedings between the Petitioners and the Respondents in regard to revenue entries are subjudice before the State Government and as such enjoined the Petitioners from carrying out any construction.

5] In the aforesaid backdrop, submissions are, boundaries of the property can be established by virtue of documentary evidence and the maps. The learned Counsel for the Petitioners as such urged that the Courts below have committed error in awarding injunction as they have failed to appreciate the boundaries, whereas the learned Counsel for the Respondents supported the order impugned.

6] Considered rival submissions.

7] Apart from the fact that there are concurrent findings against the

Petitioners, this Court need not to re-appreciate the factual matrix of the matter in the backdrop of evidence brought on record, unless it is demonstrated that there is palpable mistake on the part of the Courts below in appreciating the documentary evidence. Petitioners have failed to produce on record copy of the Sale Deed of Survey No.70 so as to demonstrate that boundaries of Plot Nos.71 and 70 are sharing each other.

8] In the aforesaid backdrop, in my opinion, no case for interference is made out. Petition as such fails and same stands dismissed. However, the Trial Court is directed to decide the suit expeditiously as already directed by the lower appellate court.

9] Admittedly, revenue proceedings are pending before the State Government. Hearing of the said proceedings are expedited. If the said proceedings are decided in favour of the Petitioners, Petitioners are at liberty to move the Court below for vacation of the interim order.

(NITIN W. SAMBRE, J.)