

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

CIVIL APPLICATION (CAS) NO. 74/2021
IN SECOND APPEAL NO.90/2018

Bihari Singh s/o Bhagwan Singh Chouhan and another
Versus
 Anil s/o Jiyalal Rai (since deceased) thr. L.Rs. and others.

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

Court's or Judge's Orders

Shri J.M. Gandhi, Advocate for Appellants.
 Shri Amol G. Hunge, Advocate for Respondent Nos. 1-A to 1-C.

CORAM : S.M. MODAK, J.
DATE : 11/08/2021.

Heard learned Advocate for the respondent Nos. 1-A to 1-C/original plaintiff and learned Advocate for appellants/defendant Nos. 1 and 2.

2. The plaintiffs' suit for removal of encroachment is decreed by the trial Court. The defendants were directed to remove encroachment i.e. unauthorized construction i.e. half portion on the southern side of the plot. When the defendant Nos. 1 and 2 filed First Appeal, they were not successful and judgment of the trial Court is confirmed. They have come to this Court by way of Second Appeal. This Court, as per the order dated 18/09/2019 has issued a notice by framing three substantial questions of law.

3. Now, they (the contesting respondents) are coming with grievance that the appellants have started with construction on the suit plot. They have filed photograph wherein it is shown that certain pits were dug. This Court has accepted the statement made by the

learned Advocate for the appellants that they will not carry out any construction till decision of this application. It was accepted on 11/02/2021.

4. The appellants by way of reply have tried to explain that no doubt these pits were dug but they were dug in order to strengthen the existing structure. It is also submitted that these pits are now filled in. Photograph to that effect is shown on record.

5. If the situation shown in the photograph filed by the appellants is seen, the contesting respondents do not say that apart from that the appellants are carrying out further construction. So, after going through the pleadings and photograph, this Court feels that these pits were dug in order to strengthen the existing structure. The learned Advocate for the appellant on taking instructions also submitted that except that they will not carry out anymore construction during pendency of this appeal. That statement is accepted.

6. Shri J.M. Gandhi, learned Advocate for the appellants submitted that even though southern portion from the plot was directed to be removed, during the pendency of the suit as there was no prohibitory injunction the appellants have completed the construction and as on today there is ground plus one storey structure. Learned Advocate for the contesting respondents submitted that there is no first floor but there is only ground floor. At this juncture this Court is not expressing any opinion about that.

7. In view of the explanation given for what purpose these pits were dug and in view of the statement made to the effect that

further constructions will not be carried out, I do not think that further directions and reliefs are required.

In view of those observations, the application is disposed of.

Second Appeal No. 90/2018

Matter be kept on 22/09/2021.

JUDGE