

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

Civil Application [CAS] No.349 of 2021
in
Second Appeal No.297 of 2019

Mohan s/o Dadarao Rarokar
vs.
Bhaskar Nathhuji Kandalkar & others

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

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Court's or Judge's Orders

Shri Y.R. Sonkusare, Advocate for the Applicant/Appellant.
Shri S.D. Khati, Advocate for the Respondents.

CORAM : S.M. MODAK, J.
DATE : 5th AUGUST, 2021.

Heard both the sides.

02] The suit for specific performance was dismissed by the trial Court and it is confirmed by the first appellate Court. The plaintiff has filed the present second appeal. This Court has already admitted the second appeal on 16/07/2019 and has also framed the substantial questions of law.

03] Pending hearing on final disposal of the appeal, the respondents have demolished the structure and that is why the present application for issuing injunction to the respondents is filed. Along with the application, few photographs are filed. One open plot is shown and it is the suit plot, as contended by the appellant. By way of reply, the respondents state that earlier there was a small structure, which was in dilapidated state. It was not fit for habitation. Accordingly, they have demolished it. They say that they have constructed a structure consisting of ground floor. A statement is made by the learned Advocate

after taking instructions from the respondents that the construction is completed. It is also submitted that they themselves are going to stay in the said house and they have not created any third party interest.

04] Perusal of the description of the suit property from the judgment of the trial Court, it reveals that the plaintiff has agreed to purchase an open plot from the predecessor in title of the respondents. The plaintiff does not say that there was a structure of any sort standing on the suit land. However, the respondents do admit that the structure was very much there.

05] No doubt, it is true that the second appeal has been admitted, but there is no direction given by the Court restraining the respondents from using the suit land in a particular manner. It may be true that if the respondents have asked for permission from the Court, the appellant could have got an opportunity to say something. However, not seeking permission does not amount to contravening to any order, because there was no order as such.

06] So, the temporary injunction, as sought by the appellant, cannot be granted. At the same time, the respondents have undertaken that they will abide to the directions to be given by the Court at the time of final disposal. So, I think, the respondents can be directed not to create third party interest and they can be directed to furnish an undertaking that they will abide to the directions of this Court. So also, it is necessary to direct the respondents to file on record the photographs showing the construction. Hence, the following directions :

- i.** The respondents are directed to file on record the photographs showing the construction made by them.
- ii.** The respondents are directed not to create any third party interest in the suit land as well as in the construction they have made.
- iii.** The respondents to abide by the directions to be given by the Court hereinafter and at the time of final disposal.
- iv.** The application is disposed of accordingly.
- v.** The matter be kept on 31st of August, 2021.

JUDGE

**sandesh*