

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

WRIT PETITION NO.1959 OF 2021

**BHAGWAT RAMKRISHNA NAGARGOJE AND OTHERS
VERSUS
SHIVAJI KRISHNA NAGARGOJE**

...

Advocate for the Petitioners : Shri Tekale Nikhil S.

Advocate for the Respondent : Shri Hiwrekar S.D.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 08th February, 2022

Per Court:

1. Heard the learned counsel for the petitioners and the respondent.
2. The petitioners, who are the defendants in RCS No.49/1990 filed for recovery of possession on the allegation being made that the defendants have encroached upon 30 R land, are aggrieved by the concurrent findings rendered by the courts below, where, the injunction came to be granted in favour of the plaintiff.
3. Pertinent to note that the suit is filed in the year 1990 and it was earlier decreed in the year 1996 against which the petitioners preferred an appeal, which came to be allowed with the direction to the Trial court to frame the issue of validity of the consolidation scheme and refer the same to the competent authority. The Second Appeal against the

said decree is disposed of upholding the remand of the suit.

4. The original plaintiff filed the application exhibit 173 seeking an injunction restraining the petitioners/ defendants from carrying out any kind of construction on the suit property. The petitioners/ defendants denied the claim and on 12.02.2020, the application came to be granted. An appeal came to be filed and the Appellate Court recorded that the permission of construction in favour of the petitioners is in respect of Block No.695 whereas, the claim of the original plaintiff is in respect of Block No.694 and thus, the learned District Judge recorded as under :-

“13. The construction permission placed on record by the defendants is in respect of Block No.695 and if temporary injunction is granted not to make any construction in Block No.694 then, no prejudice will be caused to the defendants.”

Recording prima facie case in favour of the plaintiff, the injunction has been confirmed by the Appellate Court vide the impugned order dated 14.01.2021.

5. Pertinent to note that, the suit is of the year 1990 and if it is the case of the petitioners that they intend to carryout construction in Block No.695 with which the original plaintiff has no concern, they can proceed with the construction, but apparently they are hesitant in proceeding since two properties are not clearly demarcated and the issue of consolidation scheme is already pending before the competent

authority i.e. the Deputy Director of Land Records, Aurangabad.

6. In the wake of the above, with the direction being issued to the Deputy Director of Land Records, Aurangabad, to culminate the proceedings of consolidation in respect of the area covering Block Nos.694 and 695 i.e. original Survey No.59-C and the report being submitted to the Trial Court within three months from today, the learned Joint Civil Judge, Junior Division, is requested to conclude the proceedings in the suit within a period of six months thereafter.

Necessarily without showing any indulgence in the impugned orders and by upholding the same, the Writ Petition is dismissed.

kps

(SMT. BHARATI H. DANGRE, J.)