

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

934 WRIT PETITION NO.6579 OF 2022
AASHIT GORAKSHANATH ABHANG AND ANOTHER
VERSUS
BHARAT BHAURAO KALE AND OTHERS

...

Advocate for Petitioners : Mr. Shingare K. F.

CORAM : **MANGESH S. PATIL, J.**
DATE : **28.06.2022.**

PER COURT :

The petitioners are the original plaintiffs and challenging the concurrent orders passed by the two courts below refusing to grant them temporary injunction restraining the respondent nos. 1 to 4 who are the defendant nos. 1 to 4 from carrying out any construction over the suit property.

2. The learned advocate for the petitioners would submit that the courts below have overlooked the fact that the dimensions of the property that was sold by their father to one Ajit Ashok Mandlik who was the predecessor of the respondent Nos. 1 to 4 were sought to be corrected by another instrument but after the remaining portion was gifted to them by a registered gift-deed. Since it is a matter of dispute as to title, when the correction deed was brought into existence behind the back of the petitioners about which they had no knowledge and about which they are now seeking to amend the plaint, *prima facie* and the balance of convenience was in their favour but the courts below have not considered the fact and have illegally refused to grant temporary injunction.

3. Obviously, since it is an intermediate stage of the suit, the disputed question of fact cannot be gone into threadbare. Going by the admitted position, petitioners' father had sold a portion admeasuring 21 Are

precisely described in the sale-deed, from the suit property land Gat No. 90/1 to the predecessor of the respondent Nos. 1 to 4 on 18.01.2016. It appears that thereafter the petitioners' father, under a registered gift-deed dated 01.06.2016 gifted the remaining portion of 13-Are to them, which was also described in the gift-deed. Yet thereafter the petitioners' father executed a rectification deed on 18.07.2016, correcting the dimensions of the property that was sold to the predecessor of the respondents Nos. 1 to 4 from 100 feet x 230 feet to 120 feet x 191 feet.

4. Pertinently, the plaint as of now, is absolutely silent about the rectification deed albeit the petitioners' learned advocate submits that an application for amendment of the plaint has been moved subsequently, after both the courts below had refused to grant temporary injunction. Needless to state that being a compulsory registerable document under Section 17 of the Registration Act, its knowledge can certainly be attributed to the petitioners.

5. Be that as it may, the fact remains that there is a registered rectification deed, the genuineness of which is not under challenge or question.

6. Importantly, the petitioners have filed the suit after demise of their father.

7. Be that as it may, the trial court as also the lower appellate court have refused to exercise the discretion in granting temporary injunction to the petitioners judiciously. There is no perversity or arbitrariness so that the discretion refused to be exercised by them can be interfered with and substituted by this Court in exercise of the writ jurisdiction.

8. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

mkd/-