

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

WRIT PETITION NO. 2363 OF 2021

Shivaji Baburao Bargaje & Anr.

...Petitioners

Versus

Baban Malhari Jadhav

...Respondent

.....

Mr. Vikram S. Undre, Advocate for the petitioners

Mr. V. P. Golewar h/f Mr. A. R. Joshi, Advocate for the respondent

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CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 04TH, 2022

PER COURT : -

1. Heard the learned Counsel for the applicant and the learned Counsel for the respondent.

2. The petitioners are the original defendant nos. 1 and 2 in Reg. Civil Suit No. 447/2019 filed by the respondent (Orig. plaintiff) for declaration and mandatory injunction in respect of the suit property mentioned in the plaint. The claim is based on a pleading that the plaintiff has purchased the suit property in the year 1981 and since then he is in actual physical possession of the property and accordingly his name is also mutated in the village panchayat record on the basis of sale deed. It is specifically pleaded that the area of

possession reveal the possession of the plaintiff to the extent of south-north 20 ft and east-west 35 ft., pleading that the defendants (petitioners) are the subsequent adjacent purchasers and they have demolished the earlier common wall which was constructed jointly by the plaintiffs and the erstwhile landholder of the defendants' plot, the suit has been filed.

3. The application vide Exh. 5 seeking temporary injunction came to be granted on 20.11.2019 by the Civil Judge Junior Division which came to be upheld by the appellate Court in an appeal by rendering a finding in favour of the plaintiff (respondent) to the effect that if the construction is permitted to be carried out and if it is proved that the construction is on the plot of the plaintiff, it will have to be demolished. Recording a *prima facie* case and balance of convenience in favour of the plaintiff and rendering a finding that if the defendants are permitted to construct a wall on the suit property, then the plaintiff will have to lose his possession, the injunction has been granted. In any case, the injunction is operating against the present petitioners (defendants) since 20.11.2019 and the learned Counsel for the petitioners, agree to the position that as on date the wall is demolished and is not standing. He, however, submits that he may be permitted to erect the wall on his plot and there shall be no

construction made by him on the area where the wall was earlier standing and which is the bone of contention between the parties.

4. Needless to state that after carrying out the necessary measurement and after demarcating boundaries of the respective plots of the plaintiffs and defendants, the plaintiffs can move an appropriate application to the learned Court to construct the wall and the Court may consider the said application on merits. However, at present, the concurrent finding rendered in favour of the plaintiff and against the present petitioners (defendants) in the suit do not warrant any interference and upholding the impugned orders, the writ petition is dismissed.

[BHARATI H. DANGRE]
JUDGE