

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 917 OF 2022

JAGANNATH PIRAJI KANSE
AND ANR.

... Petitioners.

V/s

SHANKAR TUKARAM KANSE AND
ORS

...Respondents.

Mr. Dilip Bodake for the Petitioners.

Mr. Kishor Patil i/b Shrikant D. Patil for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 15, 2022

P.C.:-

1] In a suit for partition initiated by the Petitioners, Trial Court proceeded to grant prayer for injunction while allowing Exhibit-6, restraining the Respondents from carrying out any development activity viz temporary or permanent construction in the suit property vide order dated 22/12/2021.

2] Respondents' appeal being Misc. Civil Appeal No.162 of 2021 was allowed vide order impugned dated 15/1/2022 whereby order granting injunction below Exhibit-6 was set aside and

Respondents/Defendants are permitted to carry out construction, subject to undertaking that in case suit is decreed, construction/development carried out shall be undone at their costs.

3] Being aggrieved, Petitioners/Plaintiffs have preferred this Petition.

4] Submissions of Mr. Bodake are, even though Appellate Court has permitted production of documents, it ought not to have gone into and appreciated its contents at appellate stage. Said piece of evidence was not the part of record of the Trial Court when the order of temporary injunction came to be passed. His next submission is, view expressed by the Trial Court while passing the order below Exhibit-6 was a possible view and merely for asking, same ought not to have been interfered with. Mr. Bodake would urge that since the suit property is a joint family property, Court below was justified in granting injunction, as admittedly, there is no separation of share by metes and bound. He has drawn support from the judgments of this Court in the matter of *M/s. Shirka Constructions & Anr. vs. M/s Appollo Engineers & Contractors Pvt. Ltd. & Anr* reported in **2018(6)**

All MR 41 and in the matter of *Mr. Jayprakash Karekar vs. Smt. Laxmi Vaman Raut and Ors.* reported in **2020(3) ALL MR 377** so as to substantiate the aforesaid submissions.

5] Mr. Patil, learned Counsel for the Respondents/Defendants would support the order impugned.

6] I have appreciated the submissions.

7] At the outset, it is to be noted that interest of the Petitioners/Plaintiffs is already safeguarded in the impugned order, as Respondents/Defendants are put to condition by the Appellate Court that in case if suit is decreed, development carried out by them shall be undone at their costs. Undertaking to that effect is also called and informed to have been executed by the Respondents before the court below. Apart from above, documents which were permitted to be produced on record even if are taken into account by the Appellate Court, Petitioners have enough opportunity to meet with such documents. Even the Petitioners were permitted to produce such documents on record which they have and the order of production of

documents before the Appellate Court is not questioned in the present Petition. Rather, Petitioners have taken a chance by questioning the order of vacation of injunction/modification of injunction by not questioning the aforesaid order whereby documents were permitted to be produced, even though for the said cause he has drawn support from the judgment of this Court in the matter of *M/s Orange City Mobile Collection vs. M/s City Collection & Ors* reported in **2017 (3) ALL MR 859**. In view of the conduct of the Petitioners, they are disentitled to raise such a plea as they have acquiesced themselves by producing documents which they have sought to produce before the Appellate Court and have also not questioned the order of the Appellate Court, permitting Respondents/Defendants to produce the documents. As far as contention as regards justifiability of the view expressed by the Trial Court while passing the order granting injunction is concerned, it appears that, as an Appellate Court, it is duty bound to re-appreciate the evidence which is permissible in law. The Appellate Court was sensitive to the independent holdings of each of the parties to the suit, jointness of the family and construction to be carried on by the Respondents at their costs and peril. Since the relief of injunction claimed is an equitable relief and the Court weighed

equities while striking the balance of convenience between the parties, in my opinion, no case for interference in the order impugned in the extraordinary jurisdiction is made out.

8] As such, Petition stands dismissed.

9] Interim order of not to carry out construction shall continue for a period of two weeks.

(NITIN W. SAMBRE, J.)