

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

**WRIT PETITION 6016 OF 2022
WITH
INTERIM APPLICATION 3166 OF 2022**

Shivaji Rangrao Jadhav

...Petitioner

vs.

Mahadev Dnyanu Sawant & Ors.

...Respondents

Mr.Dilip Bodake for Petitioner.

Mr.R.C. Barge for Respondents.

CORAM : ROHIT B. DEO, J.

DATED : 27 JUNE 2022

P.C. :

1. The Petitioner is the plaintiff in Regular Civil Suit 212/2022 which was instituted against the Respondents seeking perpetual injunction restraining the defendants from interfering with the possession *qua* the suit property, and mandatory injunction from removal of the construction which may be made during the pendency of the suit.

2. The plaintiff claims that the suit property is open land which admeasures 18 ft. x 18 ft. although in the available record, the area of the open land is shown as (12 ft x 12 ft), the vernacular expression used in the plaint is "हात".

3. The plaintiff refers to Regular Civil Suit 130/1949 between the family members of the plaintiff and then submits that in the civil suit record, the area of the plot is shown as 12 x 12 "हात्" and the finding recorded is that the said plot, which is the suit property, is in possession of deceased Rangrao Sakharam Jadhav, the father of the plaintiff.

4. The plaintiff then avers that the defendant 3 has purchased a land situated on the north of the suit plot from Mr. Tukaram Sonar and after demolishing the existing structure has started construction of the new house on 6.12.2021. The substratum of the grievance is that while constructing the new house, the defendants have encroached on portion admeasuring 9 ft. x 18 ft. of the suit property. The defendants filed their written statement denied the description of the suit property. The defendants stated that to the north of the suit property is situated a house 1646-B which is owned by the defendant 1 and additional portion of land is purchased from Mr. Vedpathak. The defendants claimed that the total land in their possession admeasures 28 x 26 ft. and that the defendants are not in any manner encroaching on the open land which is allegedly owned by the plaintiff.

5. The plaintiff applied under the provisions of Order 39 Rules 1

and 2 of the Code of Civil Procedure, 1908 (Code) and sought temporary injunction, which the learned trial court granted vide order dated 10.1.2022. Broadly, the injunction is granted by the trial court on the premise that in record of the municipal council, the suit property which is assigned property no.1646B is shown in the name of the father of the plaintiff, and from the photographs placed on record, it appears that the possibility of encroachment cannot be ruled out.

6. The defendants challenged the order of the learned trial court by filing Miscellaneous Civil Appeal 55/2022 whereby the learned District Judge-3, Satara allowed the appeal vide judgment dated 14.3.2022.

7. Being dissatisfied, the plaintiff has invoked the writ jurisdiction.

8. Having heard the learned Counsel, Mr.Dilip Bodake, for the Petitioner and the learned Counsel, Mr.R.C. Barge, for the Respondents, and having scrutinised the reasons recorded by the courts below, I see no reason to interfere with the judgment of the Appellate court, in exercise of writ jurisdiction.

9. I am constrained to observe that the order of temporary injunction which the learned trial Judge was pleased to issue leaves a lot to be desired. All that is observed in the order of the trial court is that the possibility that there is encroachment cannot be excluded. The learned trial court clearly failed to appreciate that the Municipal council record makes no reference to the area and dimension of the suit plot and that the defendants are admittedly owners of the property situated to the north of the suit plot. The learned Appellate court has rightly held that the photographs cannot be a *prima facie* evidence of the alleged encroachment. It is further found by the learned Appellate court that the existence of the suit plot and particularly, the description of the suit plot as given in paragraph 1 of the plaint is in serious dispute, and even according to the plaintiff, the Municipal record does not refer to the dimensions of the suit plot. It is further noted that the area of the property owned by the defendants is duly recorded in the Municipal council record and that in the absence of *prima facie* case, the discretion exercised by the learned trial Judge was not reasonable.

10. The plaintiff has preferred Interim Application 3166/2022 seeking permission to produce an additional evidence in the petition. I am not inclined to consider the said application. Vide order dated 17.5.2022

this Court clarified that the construction carried out shall be subject to the orders passed by the Court in the present petition. This Court did not restrain the defendants from carrying out construction. As the situation stands today, it is apparent from the photographs produced on record that the construction has progressed significantly. In this view of the matter, the appropriate order shall be to clarify that the construction which may be carried out during the pendency of the suit shall be subject to the ultimate decision in the suit and no equity shall be claimed by the defendants on the basis of the construction which may be carried out and completed during the pendency of the suit.

11. Since I entirely agree with the reasons recorded by the learned Appellate court, I direct dismissal of the petition, subject to the clarification and directions (supra).

12. The petition is dismissed.

13. Interim application is disposed of.

(ROHIT B. DEO, J.)