

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

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WRIT PETITION 6246 OF 2018

Mr. Ravindra P. Adling ... Petitioner
Versus
Mr. Vishnu B. Adling ... Respondent

Mr. Amar Bodake i/by M. V. Thorat for the Petitioner.
Mr. S. S. Aradhye for the Respondent.

CORAM: ROHIT B. DEO, J.
DATE : 27th JULY, 2022

P.C. :-

. Exception is taken to the judgment dated 25th April, 2018 rendered by the District Judge-1, Barshi whereby allowing Miscellaneous Civil Appeal 12 of 2018 preferred by the respondent-defendant, the order passed by the Trial Judge in Regular Civil Suit 51 of 2018 whereby the defendant was restrained from proceeding with the construction of the residential house, is set aside.

2. The suit is instituted for perpetual and mandatory injunction and the suit property is described as land assigned Gut 36/2 admeasuring 0.35 HR situated at village Kondhej, Tal. Karmala, Solapur.

3. The plaintiff avers that Mr. Bhagwan, Mr. Bhimrao and Mr. Popat who were the sons of Mr. Nana and Mrs. Gayabai. The plaintiff is the son of the deceased Mr. Popat and the defendant is the son of deceased Mr. Bhimrao.

4. The substratum of the plaint is that there was an oral partition in

the year 1972 and the father of the plaintiff received area admeasuring 0.23 HR from the fallow land and he constructed a residential house on that portion. The plaintiff alleges that the defendant encroached on the said land and was attempting to effect construction admeasuring 15 to 20 feet on the encroached portion.

5. The case of the defendant broadly is that there was no partition by metes and bounds of Gut 36/2 and that the share holders have constructed their respective houses on land assigned Gut 36/2. The defendant was residing in residential house constructed on the said land since last 40 years and the occasion to reconstruct the house arose because the earlier construction was rudimentary and akin to a hut. The defendant contend that he is not intending to construct on any portion of Gut 36/2 which previously was not in his occupation.

6. While, the learned Trial Judge injuncted the defendant accepting the case of the plaintiff that there was an oral partition, the Appellate Court relied on the 7/12 extracts and other revenue documents to record a *prima-facie* finding that the entire area of Gut 36/2 is joint and held in common and there is no material to suggest that there was an oral partition.

7. I need not delve deeper, since the defendant has placed on record an undertaking which reads thus :-

“A) That if this Hon'ble Court allowed or permits me to carryout construction on existing area in Gat No. 36/2 which is in my occupation, I will not encroach upon the area of Petitioner in any manner and such construction will be subject to the final decision of the Regular Civil Suit No. 51 of 2018. The present Respondent has completed more than 80% work after the order of Learned District Judge-1, Barshi.

B) I will take care that the activity of carrying out said construction will not cause any damage/s to the adjacent residential premises of the Petitioner/Original Plaintiff.”

8. I am satisfied with the apprehension of the plaintiff is suitably allayed.

9. Even otherwise, a reasonable view is taken by the learned Appellate Judge and I see no reason to interfere in writ jurisdiction. It is however made clear that the respondent shall scrupulously adhere to the undertaking.

10. The petition is dismissed.

[ROHIT B. DEO, J.]