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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 10572 OF 2019

VITTHALRAO SHRIPATI GAIKWAD THRU
POA SAGAR H. JADHAV

....PETITIONER

V/s.

SHRI. BHAGWAN KRISHNA PAWAR AND ORS

.....RESPONDENTS

Mr. P. S. Dani, senior Advocate i/b Mr. Shailesh D. Chavan Advocate
for the Petitioner

Mr. Ganesh T. Jadhav for Respondent nos. 1 to 3

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 1, 2022.

P.C.:

1) In R.C.S. No. 160/2019, based on title, prayer for injunction, removal of encroachment came to be moved by the Petitioner-Plaintiff. Prayer for grant of temporary injunction came to be allowed vide order impugned dated 11/04/2019. Respondents-Defendants were restrained from carrying out construction over the Suit property which is mentioned in para 1a and 1b. The Appellate Court vide order impugned reversed the said finding vide its order dated

31/08/2019. As such, prayer for temporary injunction came to be rejected. As such, this Petition.

2) Shri. Dani, learned senior counsel for the Petitioner would urge that even if there is some deviation in the description of boundaries of suit properties, still same could have been identified. The property of the Petitioner can be identified from adjoining boundaries as are reflected from title documents of title. That being so, Court below has committed an error in vacating the injunction. So as to substantiate his claim, he has placed on record draft map of the suit property and other adjoining properties.

3) I have perused the orders impugned passed by the learned District Judge whereby injunction granted by the learned Trial Court dated 11/04/2019 is vacated.

4) It can be noted from the reasoning of order of the Lower Appellate Court that prayer for injunction moved by the present Petitioner came to be rejected on the ground that Petitioner has failed to establish the correct boundaries of the Suit property. Such findings of the Lower Court are based on appreciation of documentary evidence on record. I have gone through the said

documents. No fault could be noticed in appreciation of boundaries by lower Appellate Court from the documents on record.

5) Fact remains that after Suit property was divided into small parts and transferred to various persons, independent mutation of each of the shareholder is not carried out thereby carving out independent Hissa number. As a consequences, it is difficult to identify the Suit property so as to consider and grant the prayer for injunction. That being so, Petitioner has failed to discharge his initial burden, Appellate Court was justified in rejecting the prayer for injunction. No case for interference is made out.

6) Petition fails, stands dismissed.

7) However, it is clarified that construction, if any carried out by Respondent-Defendant shall be subject to outcome of the Suit claim.

8) Status-quo shall continue for a period of two weeks from today.

[NITIN W. SAMBRE, J.]