

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

WRIT PETITION 2634 OF 2015

Jaygonda Yashwant Patil & Anr. .. Petitioner.

V/s.

Uttam Vishnu Sadamast .. Respondent.

Mr.Rahul S. Kate,Advocate a/w Digvijay Patil, for Petitioners.

Mr.Dilip B. Shinde,Advocate for the Respondent.

CORAM : ROHIT B. DEO, J.

DATE : 26 JULY 2022.

P.C.

1. Regular Civil Suit No.168/2011 is instituted by the petitioner seeking Decree of mandatory injunction directing the defendants to remove the alleged unauthorized construction on land purchased by the petitioners/plaintiffs vide Sale Deed dated 30.05.1991.

2. The case of the plaintiffs is that they have purchased the land admeasuring 3 R from Gat 99/10 and on this land, the defendant has constructed a Bunglow in the year 2009.

3. The defendant claims to hold an agreement for sale executed by the owner of Gat 99/10 and has lodged counter claim claiming specific performance of the Agreement.

4. In the year 2013, the plaintiffs preferred an application under Order 26 Rule 9 seeking appointment of the Court Commissioner to

measure Gat 99/10 and then to demarcate the area of 3 R which is purchased by the plaintiffs. Vide order dated 17.11.2014 the learned trial Judge rejected the application. The learned trial Judge held that the Sale Deed dated 30.5.1991 is disputed, and in any event, the plaintiffs can not be permitted to collect the evidence.

5. This petition is being heard for admission in the year 2022. Way back in 2015, this Court clarified that there is no stay to the proceedings. I would assume that in the years gone by the suit must have progressed significantly. I must record in fairness to the learned Counsel, that the learned Counsel state that they have no instructions as regards progress of the suit. Be that, as it may.

6. I am not inclined to interfere with the order impugned. As apart from the very futility of considering such issue at this stage, I find that the learned trial Judge committed no error in holding that plaintiffs can not be permitted to collect the evidence.

7. Petition is dismissed.

(ROHIT B. DEO, J.)