

(19)-WP-3492-22 (corrected).doc.

Corrected as per speaking to minute of the order dated 8th April, 2022.

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

WRIT PETITION NO.3492 OF 2022

Vijay Ramesh Mohite and Anr.

..Petitioners

Versus

Anil Prabhakar Mohite and Ors.

..Respondents

Mr. A. Y. Sakhare, Senior Advocate i/by Kalpesh U. Patil, for the
Petitioners.

Mr. G. S. Godbole i/by Akshay Patkar a/w Khushboo Oswal, for the
Respondent Nos.1 to 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th MARCH, 2022

PC.

1. Based on title, plaintiffs initiated suit for simplicitor injunction being RCS No.46 of 2020. The claim is in relation to Gat No.909 in part 1A and 1B. Bone of contention between the parties is in relation to Gat No.909, part 1B as reflected in the plaint.

2. The respondents/defendants filed their written statement to the claim in the plaint and while dealing with the prayer for grant of injunction, the Court below vide order 20th January, 2022, so also the Appellate Court held that the suit being for simplicitor injunction, is not maintainable. As such, it is held that the petitioners are not entitled for grant of temporary injunction. As a consequence of which, injunction which was in

operation in favour of the petitioners came to be vacated.

3. After having heard for respective counsels for some time, though Mr. G. S. Godbole has tried to rely on the pleadings in the written statement particularly in paragraphs 21, 22 and 30 to establish that the respondents/defendants have denied title of the petitioners and as such suit for simplicitor injunction is not maintainable, this Court is required to be sensitive to the Order VIII Rule 5 of the CPC. The denial can be noticed from the aforesaid pleadings of the respondents, which are in the form of evasive denial and not specific denial. In the aforesaid background, contention that the suit is for simplicitor injunction and same is not maintainable as the respondents have denied title of the petitioners is contrary to the record and the provisions referred to above. That being so, the orders impugned passed by both the Courts below i.e. Trial Court dated 20th January, 2022 and the Appellate Court dated 15th March, 2022 are hereby quashed and set aside.

4. Let there be temporary injunction in favour of the petitioners as prayed for a period of three months which if required, may be continued till the following directions are taken to its logical end.

5. By consent of the parties, the Deputy Superintendent of Tasgaon Taluka is appointed as Court Commissioner for carrying out measurement of the survey no.285 i.e. Gat No.907, 908, 909, 912 &

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913. The formal order to that effect be passed by the Trial Court and the cost of the Court Commissioner is agreed to be borne by both the parties equally. Once the Court Commissioner's report is before the Court, it shall be open for the Trial Court to proceed ahead with the hearing on the issue of confirmation of temporary injunction which is ordered to be continued by this Court till the disposal of application Exh.5 afresh. The Court Commissioner's report be placed on record within a period of eight weeks from today subject to compliance of aforesaid by the rival parties. In case if the petitioners or respondents fail to comply with the aforesaid directions in the matter of carrying out measurement, the Court below will be at liberty draw an adverse inference and put the defaulting party to appropriate condition.

6. Both the parties hereto agree that they shall be appearing before the Trial Court on 4th April, 2022.

7. Since the order in the matter is of innocuous nature, notice to respondent Nos.1 to 3 is dispensed with.

8. The petition as such stands disposed of in above terms.

[NITIN W. SAMBRE, J.]