

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 7324 OF 2018
WITH
INTERIM APPLICATION 417 OF 2020

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NITIN
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Grampanchayat Gotewadi

..Petitioner

V/s.

Bhaskar Pandurang Suryawanshi & Ors.

..Respondents

Mr. Nandimath Abhishek i/b Umesh Mankapure for the
Petitioner.

Mr. N.J. Patil i/b Amey Patil for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 13 JUNE 2022

P.C.

1. The Petitioner-Grampanchayat was the Defendant in Regular Civil Suit 255 of 2001 which was brought by the Respondent-Plaintiffs seeking injunction decree, restraining the Defendant from interfering with the possession of the subject matter of the suit.

2. The suit came to be decreed by the Civil Judge Junior Division, Tasgaon vide Judgment dated 11.03.2008. It is common ground that Regular Civil Appeal 163 of 2008 was preferred by the Defendant, which came to be dismissed on

30.01.2014. While the order impugned, notices the submission of the Grampanchayat that Second Appeal is preferred, there is nothing on record to suggest that the Second Appeal is admitted or then there is an interim order operating.

3. This petition emanates from execution proceeding, particularly order dated 13.06.2018 rendered by the Civil Court which purports to partly allowed application Exh.11, which was preferred by the Plaintiffs-Decree holder seeking permission to reconstruct the cattle shed with police protection. The application Exh. 11 was preferred on the premise that the Judgment Debtor-Grampanchayat illegally encroached upon the suit property and removed the cattle shed, stone wall etc. by deploying JCB machine. This is done, according to the Plaintiff during the operation of the injunction order in Regular Civil Suit 255 of 2001. Resisting the said application, the Grampanchayat contended that the Decree-Holder has encroached upon the property and is attempting to construct, the cattle shed on property, which is not the subject mater of the suit, and which as of fact is owned by the Grampanchayat.

4. The Executing Court has given sound reasons for permitting the Decree-Holder to reconstruct the cattle shed with the assistance of the police.

5. In writ jurisdiction, it would not be permissible to interfere with findings which was recorded by the Executing Court since the findings are not shown to be perverse, nor is it demonstrated that there is such error as would occasion serious miscarriage of justice.

6. Insofar as the apprehension expressed by the learned counsel for the Grampanchayat, that the application seeking permission to reconstruct the shed is camouflage for committing encroachment, suffice to note that the neither the Executing Court, nor any litigant can go beyond the decree. It is axiomatic that whatever construction is to be effected, shall be confined to the subject matter of the suit. If the Plaintiffs-Decree Holder under the garb of constructing the shed commits any encroachment, it shall be open for the Grampanchayat to take recourse to such remedies as are available in law.

7. The petition is disposed of.

8. In view of disposal of the Writ Petition, nothing survives in Interim application. Hence, the same is also disposed of as infructuous.

(ROHIT B. DEO, J.)