

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 6332 OF 2019

Dasaram Janba Madavi and Ors.

Vs.

Manjulabai Mitaram Sonwane and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Kirti Deshpande, Advocate h/f Mr. Rajnish Vyas,
Advocate for petitioners.

Mr. Abhinav V. Muley, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 13.07.2022.

By this writ petition, the original plaintiffs have approached this Court, aggrieved by concurrent orders passed by the two Courts below, whereby their prayer for grant of temporary injunction was rejected.

2. According to the petitioners, in the suit for permanent injunction filed on their behalf claiming that the respondents had committed encroachment while undertaking construction, an application for grant of temporary injunction was moved under Order 39 Rule 1 & 2 of the Code of

Civil Procedure. In the said application, it was prayed that the respondents be restrained from carrying out construction in open area and by encroaching upon a road.

3. The trial Court took into consideration the material on record and gave a finding that upon perusal of such material, it did not appear that the respondents were undertaking construction of the house beyond their land, in the context of the sale-deed 13.03.1969, whereby they had become owners of the land in question. The trial Court also referred to certain photographs that were placed on record, which also indicated that the construction was not being made beyond the land as specified in sale-deed dated 13.03.1969.

4. The District Court in an appeal filed by the petitioners confirmed the aforesaid findings of the trial Court, upon appreciation of the contentions raised by the rival parties. It was *prima facie* found that the road was still available to the petitioners i.e. plaintiffs and that therefore, no interference was warranted in the order passed by the trial Court.

5. The learned counsel appearing for the petitioners vehemently submitted that the concurrent findings rendered by the two Courts below are unsustainable and that there is every possibility of the respondents undertaking construction, which would amount to encroachment of the open space and the road, that would unnecessarily create complications during the pendency of the suit.

6. The learned counsel appearing for the respondents supported the impugned orders passed by the two Courts below.

7. This Court has considered the material on record and it is found that findings have been rendered in favour of the respondents after appreciating sale-deed dated 13.03.1969, and photographs placed on record and other material before the trial Court, indicating the extent to which the respondents intend to undertake constructions. The two Courts below have rendered findings on a *prima facie* appreciation of the material on record, which cannot be said to be perverse, warranting exercise of writ jurisdiction by this Court.

8. In view of the above, the writ petition is dismissed. The trial Court is expected to conduct the proceedings in the pending suit in an expeditious manner.

JUDGE