

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11727 OF 2021

**SANTOSH NARSU KHAWADE
VERSUS
UDAYRAJ ALIAS UTTAM NARSU KHAWADE AND OTHERS**

...
Advocate for Petitioner : Mr. Charuta Sunil Deshmukh
Advocate for Respondent Nos. 1 to 4 : Mr. A.J. Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th JUNE, 2023

PER COURT :

1. Petitioner by this petition filed under Articles 226 and 227 of the Constitution of India has challenged the order dated 20/01/2020 passed by learned District Judge-3, Jalgaon, in Misc. Civil Appeal No.27/2019, thereby confirming the order passed by learned Joint Civil Judge, Junior Division, Jamner, below Exhibit-6 in Regular Civil Suit No.52/2019.

2. Respondent/plaintiff filed the suit seeking permanent injunction in respect of his property bearing Gut No.2/2 situated at village Maldabhadi, Tq. Jamner, District Jalgaon, claiming that the petitioner/defendant No.1 is trying to encroach on the suit property which is abutting to his holding land Gut No.4, wherein he is carrying out construction. The petitioner/defendant No.1 filed written statement and say and opposed the suit as well as

temporary injunction application. Trial Court after hearing the parties has granted temporary injunction in favour of plaintiff, thereby directing petitioner/defendant No.1 to stop construction of the house/structure over the suit property i.e. Gut No.2/2 on it's Eastern-North side. Being aggrieved by the temporary injunction order, petitioner preferred Misc. Civil Appeal No.27/2019, which came to be dismissed by the appellate Court. Hence, the present petition.

3. Heard learned advocate for petitioner and learned advocate for respondent Nos.1 to 4. Perused the writ petition memo, annexures thereto and the impugned order.

4. Learned advocate for petitioner has categorically made a statement that his construction is in the portion of land owned and possessed by him and he is not encroaching upon the suit property. In support of his submission he has placed on record photographs, which according to him show that he is constructing on his own property.

5. Learned advocate for respondents opposed the petition and supported the order impugned in present petition. He further submits that since recording of evidence is going on in the trial Court, this Court may not interfere at this stage by exercising extra-ordinary writ jurisdiction.

6. Considering the statement made by the petitioner that the construction is in the portion of land owned and possessed by him and since in the trial evidence is being recorded, it is not desirable to enter into the merits of the rival contentions at this stage.

7. *Prima facie* no case is made out by the petitioner to interfere in exercise of extra-ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)