

Nikita

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

WRIT PETITION NO.1082 OF 2021

Raosaheb Bhagwan More and Anr. ... Petitioners

V/s.

Balaso Bhagwan More and Ors. ... Respondents

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Mr. Mahindra B. Deshmukh for the Petitioners.

Mr. Dnyaneshwar J. Deshmukh, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 12, 2023

P.C.:

1. By this petition under Article 227 of Constitution of India, plaintiffs are challenging the order of injunction passed by the Trial Court in an application for temporary injunction in counter claim filed by the defendant No.3.

2. According to the defendant No.3, the well is situated in Gat No.678. On the date when the temporary injunction application was filed by the defendant No.3, the petitioners/plaintiffs, had not pleaded that the suit well was situated within the boundaries of Gat No.677 and 678. The material on record indicates that the Gat No.678 is purchased by defendant No.3. The sale deed is in the name of defendant No.3. The absence of case by the petitioners in plaint that the well is situated between Gat No.677 and 678, no

relief can be granted in the present writ petition.

3. Learned advocate for the petitioners submitted that after passing of order of temporary injunction by the Trial Court, the plaintiffs have amended the plaint and have stated that the well is situated within Gat No.677 and 678. It is well settled law that the pleadings as was in existence on the date of adjudication of temporary injunction application needs to be considered. In absence of such case being pleaded by the plaintiff, the Trial Court and the Appellate Court was justified in granting injunction against the plaintiffs.

4. The next submission on behalf of the petitioners is that, in earlier suit filed by the adjoining owner, plaintiffs along with the defendants filed a written statement. The husband of defendant No.3, admitted in the written statement that the well is situated within Gat No.677 and 678.

5. On perusal of the pleadings in the earlier suit, it appears that the suit was between the adjoining owner and the plaintiffs and defendants jointly. While resisting the claim of adjoining owners, Balasaheb More filed a written statement. In the light of the controversy, the issue involved in the said suit was not in relation to the location of the well as to whether it was in Gat No.677 or 678, such pleadings was made by the defendant No.1. The pursis signed by the defendant No.3, adopting the written statement will be of no benefit to the present petitioners as the admission made in the written statement cannot be termed as unambiguous and unequivocal. The Taluka Inspector of Land Records report

produced on record, supports the case of defendant No.3. Taluka Inspector of Land Records, report indicates that the well is situated in Gat No.678.

6. Based on aforesaid factors, the temporary injunction granted by the Courts cannot be faulted.

7. Moreover, for more than three years, the injunction is running against the petitioner. Therefore, at this stage it is not necessary to interfere with the concurrent findings by the Court below. There is no merit in the petition.

8. The writ petition stands dismissed.

(AMIT BORKAR, J.)