

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 14575 OF 2022****WITH****INTERIM APPLICATION NO. 1743 OF 2023**

Neelam Prakash Whabi .. Petitioner/Applicant

Versus

Tirupathi Estate Developers and Ors. .. Respondents

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- Mr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Kumar Kukreja i/by Sagar A. Rane for Petitioner

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CORAM : MILIND N. JADHAV, J.**DATE : FEBRUARY 27, 2023.****P.C.:**

1. Heard Mr. Tulzapurkar, learned Senior Advocate for Petitioner.
2. Mr. Tulzapurkar would submit that Interim Application No. 1743 of 2023 has been filed for seeking leave to amend to place on record certain documents which were inadvertently not annexed to the Petition.
3. Considering that the Writ Petition is at pre-hearing stage, Interim Application is allowed.
4. Necessary amendment to be carried out within one week from today. Re-verification is dispensed with. Copy of the amended Application shall be served on the Respondents.
5. Interim Application No. 1743 of 2023 is disposed.
6. Perused the impugned order dated 15.09.2022 passed in MCA No. 70 of 2022 below Exh.23.

7. By virtue of the impugned order, the order passed by the learned Trial Court below Exh. 5 has been upheld. Mr. Tulzapurkar would submit that Petitioner being Plaintiff before the learned Trial Court is the owner of the suit land including structures standing thereon by virtue of registered Indenture Deed dated 07.10.1991 and a subsequent Indenture Deed dated 27.01.1992. He would submit that apprehending Respondents' attempt to dispossess the Petitioner from the suit land, the suit before the learned Trial Court came to be filed.

8. Perusal of record indicates that there is no real dispute in so far as declaration or title of the suit property is concerned between the parties, save and except to the extent that there appears to be a dispute about the boundaries of the suit properties between the Plaintiff and Defendants who are neighbours.

9. Learned Trial Court has returned a finding that unless and until joint measurement of the suit land is made the aspect of irreparable loss whatsoever cannot be determined and in that view of the matter the learned Appellate Court has confirmed the order passed below Exh.5.

10. An arguable case has been made out by Mr. Tulzapurkar.

11. Issue notice to Respondents. Petitioner is directed to serve the Respondents. Humdast permitted. In addition to Court's notice Petitioner is directed to serve the Respondents and inform them the next date of hearing by any permissible mode of service and file

appropriate affidavit of service with tangible proof thereof. After receiving notice, Respondents to file their affidavit-in-reply on or before next date.

12. It is clarified that this Writ Petition shall be disposed of at the admission stage. In the meanwhile, status quo to be maintained by both the parties.

13. Stand over to **20th March, 2023.**

[MILIND N. JADHAV, J.]

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