

VRJ

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

WRIT PETITION NO.10559 OF 2023

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RAMESH
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Date: 2023.11.30
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Sindhubai Janardhan Rahane & Ors. ... Petitioners

V/s.

Samasth Gaavkari Mandali & Ors. ... Respondent

Mr. Sanjiv Sawant with Mr. Sandeep Barve with Mr. Dushyant Digamber and Mr. Vijay Namare i/by B. K. Barve and Company for the petitioners.

Mr. Pramod N. Joshi for respondent Nos.2 to 21 and 23 to 28.

Mr. A. B. Chate, AGP with Mr. M.S. Srivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2023

P.C.:

1. The petitioners are original plaintiffs who filed a suit seeking a declaration that the plaintiffs have become owner by adverse possession and restraining the defendants from changing nature of the suit property or from creating third party rights.

2. In the said suit the petitioners filed an application for temporary injunction restraining the defendants from creating third party rights over the suit property.

3. The Trial Court rejected the application holding that the status of the plaintiffs is that of encroacher. However, the Trial

Court further clarified that though the plaintiffs are encroacher, defendants cannot recover the possession of Suit Property No.2 without following due process of law.

4. The Appellate Court, by the impugned order, confirmed the order.

5. On perusal of the material on record, it appears that the plaintiffs are claiming relief of injunction not to create third party rights against the defendants based on alleged ownership right on the principle of adverse possession. To claim such right of adverse possession, it is necessary for the plaintiffs to plead as to when the possession of the plaintiffs become hostile with the defendants. In the absence of pleading of necessary ingredients of adverse possession, the prima facie finding recorded by the Courts below that the status of the petitioners is that of encroacher does not suffer from illegality. However, as clarified by the Trial Court and as submitted by the learned advocate for the respondents that respondents have already filed counter claim seeking possession of property from the plaintiffs, it is clarified that till such decree is passed, the petitioners shall be entitled to continue with possession.

6. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)