

Nikita

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

WRIT PETITION NO.5572 OF 2022

Hanumant Kondiba Wabale and Ors. ... Petitioners

V/s.

Baban Nivrutti Pingale ... Respondent

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Mr. Rahul S. Kate, for the Petitioners.

Ms. Priyanka Gupta i/b Mr. Rupesh A. Zade for
Respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 15, 2023

P.C.:

1. The petitioners are defendants in Regular Civil Suit No.344 of 2019 filed by respondent for removal of encroachment. The respondent No.1 prayed that defendant be directed to handover encroached portion and to demolish the construction carried out by the defendants on encroached portion. Further injunction restraining defendants from carrying out construction on encroached portion is also sought.

2. The respondent filed application for temporary injunction restraining defendants from carrying out construction over the suit property. The Trial Court granted order of injunction restraining defendants from carrying out new construction. The Appellate Court modified the order restraining the defendants from carrying

out any construction in the suit property till the decision of the suit.

3. The petitioners have placed on record photographs of the construction carried out by the defendant. Moreover, the petitioners have filed an undertaking stating that 80% of the construction is over. Work of laying roofs, finishing, compounding wall remain. They further undertake not to claim any equity, in case plaintiff succeed in suit and the defendants shall remove such construction within six weeks.

4. Undertaking is accepted and marked “X” for identification.

5. Petitioner Nos.1 to 3 who have filed undertaking are present in the Court.

6. In view of undertaking stating that 80% of construction is over and the petitioners shall not claim any equities in case the suit is decided against the petitioners. The orders passed by the Courts below are modified. Hence, following order:

a) The impugned order passed by the District Court is modified permitting petitioners to complete construction as shown in the photograph subject to compliance of undertaking.

b) The legality of construction shall be subject to final decision of the suit.

7. With this modification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)