

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 893 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 16640 OF 2023

Kalpak Balkrishna Naik and Ors.

...Appellants

V/s.

Dilip Ganesh Naik and anr.

....Respondents

Mr. Surel Shah i.by. Mr. Sandeep Waghmare, for the Appellants.

Mr. Vishal Kanade a/w. Ms. Janhavee Joshi, Mr. Rupesh Lanjekar i/by.

Mr. Sanjay Gawde, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 November 2023.

P.C. :

1. By the present Appeal, Appellants challenge order dated 5 July 2023 passed by the Civil Judge Senior Division, Vasai allowing Plaintiff's Application at Exhibit-5 for temporary injunction. By the impugned order, the Trial Court has restrained the Defendants/Appellants from disturbing possession of the Plaintiffs and from interfering in development/construction work over the suit property till disposal of the suit.

2. I have heard Mr. Shah, the learned counsel appearing for the Appellant and Mr. Kanade the learned counsel appearing for the Respondents.

3. Perusal of the order passed by the Trial Court would indicate that the names of the Plaintiffs were consistently reflected in the Revenue Records since the year 1955 until for the first time, Defendants' name came to be mutated to the Revenue Records by effecting Mutation Entry in the year 2023. The Trial Court has recorded a *prima-facie* finding that Plaintiffs are in possession of the suit property. The Trial Court has also observed that no attempt was made by the Defendants to challenge the revenue entries consistently reflecting the names of the Plaintiffs since the year 1955. Considering these findings recorded by the Trial Court, the Order of interim *injunction* granted by the Trial Court cannot be found fault with.

4. Mr. Shah would however contend that permitting the Plaintiffs to carry out the development/construction over the suit property would change its nature. That while granting blanket injunction, the Trial Court has not protected the interest of the Defendants in any manner by clarifying that the Plaintiffs shall not claim any equities in the construction. This concern raised by Mr. Shah can be adequately taken care of by clarifying that the Plaintiffs shall not claim any equities in the construction carried out in pursuance of the injunction order dated 5 July 2023.

5. The present Appeal is disposed of by upholding the order dated 5 July 2023 except with the modification that the Plaintiffs shall not claim any equities over the construction carried out in the suit property in pursuance of the injunction order in the event of Plaintiffs' suit being dismissed and the construction shall be subject to the outcome of the suit. With the above directions, the Appeal is **disposed of**.

6. The Trial Court shall proceed to decide the suit without being influenced by any of the observations made in the present order.

7. Pending Interim Applications if any also stand disposed of.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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NEETA SHAILESH
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