

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2448 OF 2023

Sampat Patilbuva Sangamnere
and Ors.

.. Petitioners

v/s.

Devdatta Krishnaji Padhye
and Ors.

.. Respondents

...

Mr. Abhijeet J. Kandarkar, Advocate for the petitioners.

...

CORAM : SANDEEP V. MARNE, J.

DATED : JULY 28, 2023.

P.C. :

1. By this petition, Petitioner challenges order dated December 12, 2022 passed by the Civil Judge Junior Division, Niphad rejecting application of Petitioners-Plaintiffs by which they had sought protection against measurement exercise which was being carried out at the behest of the Defendants.

2. Plaintiffs have filed Regular Civil Suit No. 840/2022 seeking declaration of ownership in respect of the suit property as

well as seeking injunction against the Defendants from interfering in possession of the suit property. The Plaintiffs have filed application at Exhibit-5 for temporary injunction which is pending. During pendency of that application, it appears that Plaintiffs filed application at Exhibit-26 for interim protection. Additionally, Plaintiffs also filed application at Exhibit-34 on December 12, 2022 seeking further interim protection to restrain the Defendants from measuring Plaintiff's suit property. The application is rejected by order dated December 12, 2022.

3. It appears that the measurement at the behest of the Defendants was to be carried out by the Revenue Officials. Plaintiffs apprehend that by carrying out the measurement, Defendants are likely to disturb plaintiffs' possession by putting fencing over the suit property.

4. Plaintiffs have already filed application for interim injunction to restrain Defendants from interfering with their possession. The said application is pending. It is unknown as to why the Plaintiffs are not prosecuting the application for temporary injunction and are filing subsequent applications seeking interim reliefs. The Trial Court has held that the land Revenue Officials could not have evicted Petitioners from the suit property while carrying out measurements.

5. In my view, instead of filing application at Exhibit-34 to seek stay on measurement of the suit property, Plaintiffs could not have pressed their application for interim injunction filed at Exhibit-5. Therefore, no interference is warranted in the impugned order dated December 12, 2022. However, it is observed that the Plaintiffs are entitled to press their application for interim injunction filed at Exhibit-5 and the Trial Court shall decide the same on its own merits as expeditiously as possible without being influenced by any of the observations made in the order dated December 12, 2022. With the above observations, the Writ Petition is **disposed of**.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

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NEETA SHAILESH
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