



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Appeal Against Order No. 33 of 2023

Kaji Arifullah Kudartullah and others

Versus

Marotrao Chimnaji Dudhe and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.M.Vaishnav, Advocate for the appellants.

Shri Rahul Tajne, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 14th DECEMBER, 2023.

Heard.

2. The order dated 6th May, 2023 passed by the learned District Judge-2, Darwha in Regular Civil Appeal No. 17 of 2023, rejecting the application for temporary injunction thereby restraining the respondent from alienating the land in dispute i.e. 0.22 HR, is under challenge in this appeal.

3. It is the case of the appellant that the respondents have encroached the land of the appellants to the extent of 0.22 HR and accordingly a suit for removal of encroachment was filed. During the pendency of the suit the injunction was granted in favour of the appellants on 9th October, 2020 which was subsequently vacated and against the same writ petition no. 1245 of 2021 was filed and in the said writ petition,

this Court directed the respondents not to create any third party interest in the suit property. Thereafter, the suit was dismissed on 6th April, 2023 and thereupon, an appeal was filed along with application for temporary injunction on 3rd May, 2023. The said application came to be rejected on 6th May, 2023.

4. Thus, it is apparent on the face of the record that after filing of the suit for removal of encroachment by the appellants, the temporary injunction, not to create third party interest over the suit land was in operation till the decision in the suit.

5. After the rejection of the application for temporary injunction, this Court vide order dated 14th June, 2023 directed the respondents not to create third party interest. Thus, it is apparent that from the date of dismissal of the suit i.e. 6th April, 2023 till 14th June, 2023 except for these two months there was injunction operating in favour of the appellants.

6. In the above referred backdrop, if the reasons recorded by the learned Lower Appellate Court are considered while rejecting the application for temporary injunction, I have no hesitation to hold that the reasons are erroneous and the application was rejected without considering the most crucial fact that

the order of injunction was continuously in operation till the dismissal of the suit.

7. In the above referred backdrop, I am of the opinion that ends of justice would be subserved if the order dated 14th June, 2023 passed by this Court shall continue with direction to the learned Lower Appellate Court to decide the appeal within three months from the next fixed date of the appeal.

8. Accordingly, the appeal against order is disposed of with a direction to the learned Lower Appellate Court to decide the Regular Civil Appeal No. 17 of 2023, expeditiously in any case, within three months from the next fixed date.

9. In the meantime, the order passed by this Court vide order dated 14th June, 2023 shall continue to operate in respect of the suit land i.e. land admeasuring 0.22 HR.

10. Both the parties have undertake to cooperate the learned Lower Appellate Court to dispose of the appeal within stipulated time.

11. The learned Lower Appellate Court may consider the request of the appellant seeking exemption from filing of the paper book, if such request is made.

[ANIL S. KILOR, J.]