



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO. 3644 OF 2024

Shivajirao Raosaheb Lomte And Another

VERSUS

Netaji Raosaheb Lomte And Another

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Advocate for the Petitioner : Mr. M.D. Shinde

Advocate for Respondent 1 : Mr. Amya Sabnis h/f. Mr. V.U. Jadhav

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CORAM : ARUN R. PEDNEKER, J.

Dated : April 19, 2024

PER COURT :-

1. Heard the learned counsel for the parties.
2. By the present writ petition, the petitioners are challenging the impugned order dated 15.5.2023 below Exh. 5 in R.C.S. No. 20/2023 passed by the learned 3rd Jt. Civil Judge, Junior Division, Latur, rejecting the application filed by the petitioners/plaintiffs for temporary injunction and the impugned judgment and order dated 13.3.2024 in Misc. Civil Appeal No. 56/2023 passed by the learned District Judge-1, Latur, confirming the order of the learned Trial Court.
3. Parties are brothers inter-se and the suit property was partitioned between them. The learned counsel for the petitioners submits that defendants encroached upon suit land to the extent of 41 R. land from the western side and has started construction of petrol pump thereon. The learned counsel for the petitioner submits that the courts below have erred in refusing the injunction in favour of the petitioners, relying upon the

photographs and wrongly held that there is no encroachment.

4. The learned counsel for the respondents/defendant denied the case of the plaintiffs/petitioners. He placed reliance on paragraph No. 42 of the impugned order dated 15.5.2023 passed by the learned Trial Court, which is as under :-

"42. Present suit is for possession of encroached portion. Admittedly, defendant No. 1 is in possession of western side portion out of land Gat No. 98. Whether defendant No. 1 had made encroachment or not can be decided after full-fledged trial on the basis of joint measurement through T.I.L.R. office. Prima-face, plaintiffs have not proved that defendants made encroachment upon suit land. Balance of convenience is not in their favour. Defendant No. 1 is allotted petrol pump by Indian Oil Corporation. In such circumstances, if temporary injunction is granted against defendant No. 1, then irreparable loss would be caused to him. No irreparable loss would be caused to plaintiffs. If they succeed in proving case of encroachment, they can seek vacant possession by demolishing construction and mesne profits. As such, plaintiffs are not entitled for temporary injunction as prayed. Hence, I record findings as to Point Nos. 1 to 3 in Negative."

5. The learned counsel for the petitioners submits that the application filed for joint measurement of the suit land by the T.I.L.R. is pending before the Trial Court. The learned counsel, therefore, seeks direction to the trial Court to expedite the hearing on the said application for joint measurement by T.I.L.R. and also prays for expediting the suit.

6. In view of the fact that the parties are inter-se brothers and there is

rivalry between the parties on account of boundaries of the suit property, the Trial Court is directed to decide the application filed for joint measurement of the land expeditiously and in any event, within two months from the date of production of this order. The Trial Court is also directed to decide the suit expeditiously.

7. In view of the observations made above, the writ petition is disposed of.

(ARUN R. PEDNEKER, J.)

ssc/