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

WRIT PETITION NO. 847 OF 2024

Shailendra s/o. Pandharinath Raskar and Anr. .. Petitioners

Versus

Vinod s/o. Narayandas Gandhi and Ors. .. Respondents

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- Mr. Deepak C. Natu a/w. Ms. Gayatri K. Soni, Advocates i/by N. Deepak & Co. for Petitioners.
 - Mr. Vishal M. Dhamal, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2024.

P.C.:

1. Heard Mr. Natu, learned Advocate for Petitioners and Mr. Dhamal, learned Advocate for Respondents.

2. The judgment impugned in the present Writ Petition is the judgment dated 01.12.2021 passed in Misc. Civil Appeal No.75 of 2021 upholding Application below Exhibit “5” dated 26.04.2021 passed in Regular Civil Suit No.7 of 2021.

3. It is seen that the Plaintiffs have filed a Suit for declaration and injunction as also are seeking directions against Defendants from obstructing their property. Order dated 26.04.2021 is placed in a separate compilation at page No.280 submitted by the Petitioners.

4. The impugned judgment dated 01.12.2021 is at page No.292 of the Writ Petition. The learned Trial Court while deciding the Application below Exhibit “5” has considered the relevant parameters and pass a reasoned order. Though there are some issues raised by the Plaintiffs in respect of incorrect mentioning of the boundaries, that it always to be taken care of at the stage of the trial and in so far as the order under Exhibit “5” is concerned, the same has to be on principles of evidence *prima facie* appreciated by the Court. That exercise appears to have been clearly undertaken by the learned Trial Court while recording the submissions of both the parties as also determining the Application below Exhibit “5” with reasons.

5. The learned Appellate Court in Misc. Civil Appeal No.75 of 2021 while considering the order of the Trial Court has once again framed issues and considered the case of both the parties. In paragraph Nos.15 to 19, adequate reasons have been given by the learned Appellate Court while upholding the order of the learned Trial Court. In so far as the issue of incorrect boundaries raised by the Defendants is concerned, the learned Appellate Court holds that if there are any overlapping boundaries with respect to the possession of the parties, it would depend upon the documentary evidence as also genuineness of the measurement map which would be issues and aspects to be decided on the basis of evidence at the trial.

6. Both the learned Courts have come to the conclusion that *prima facie* the Plaintiffs have made out the case for grant of injunction. In that view of the matter, I do not find any reason to interfere with either of the said orders. Both orders are sustained. Petition fails.

7. However, at the request of both the learned Advocates appearing for the respective parties, the learned Trial Court is directed by this Court to dispose of Regular Civil Suit No.7 of 2021 as expeditiously as possible and preferably within a period of eighteen (18) months from today.

8. It is clarified that, the Trial Court shall not be influenced by any of the observations and findings returned by the learned Trial Court in the Exhibit “5” order as also by the learned Appellate Court in Misc. Civil Appeal No.75 of 2021 while determining the Suit.

9. All contentions of the parties are expressly kept open and the Suit shall be determined strictly in accordance with law on its own merits.

10. With the above directions, Writ Petition is rejected and disposed.

[MILIND N. JADHAV, J.]

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