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

WRIT PETITION NO. 7 OF 2024

Suhas Kisanrao Pangul and Ors.

.. Petitioners

Versus

Vinayak Kisan Terwade and Ors.

.. Respondents

-
- Mr. Dharendra V. Takawale, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 08, 2024.

P.C.:

- 1.** Heard Mr. Takawale, learned Advocate for Petitioners.
- 2.** This Writ Petition takes exception to the order passed below Exhibit “5” in Regular Civil Suit No.1626 of 2018. The impugned order is at page No.103 of the Writ Petition. Suit is filed for injunction and regarding encroachment carried out by the Defendants. Suit property has been described in paragraph No.2 of the plaint. It is the contention of the Plaintiff that relying upon a document at Exhibit “3” being the sale deed and another document namely K-Patrak produced by the Plaintiff, Plaintiff has approached the Court for seeking measurement of the suit land. This is however on the premise that the Plaintiff has exclusive possession of the suit land. However Defendants have refuted the case of the Plaintiff. The issue relating to identification of the suit property purchased by the Plaintiff has been

discussed by the learned Trial Court in paragraph No.11 of the impugned order wherein three specific sale deeds namely documents filed below Exhibit “3” (sale deed of the Plaintiff), Exhibit “26” and Exhibit “29” (documents of the predecessor-in-title of the Plaintiff) have been *prima facie* considered.

3. A clear finding has been arrived at by the learned Trial Court that in view of the incorrect mention of Hissa No.1 pertaining to the suit property in the sale deed bearing No.1601/1979 dated 28.05.1979, the situation had arisen. Plaintiff however pleaded that the correction / rectification was also executed. However the said rectification deed was not made available by the Plaintiff's before the learned Trial Court. The issue, *inter alia*, pertains to the property purchased by the Plaintiff by virtue of sale deed at Exhibit “3” and the Plaintiff has failed to establish the link of the old survey number corresponding to the present survey number as referred to in the suit plaint. All the above issues are however kept expressly open for the Plaintiff to prove in witness action by oral as well as documentary evidence.

4. I see no reason to interfere with the reasons and findings given by the learned Trial Court while rejecting the Application for interim relief on the basis of the aforementioned two findings.

5. That apart, the learned Trial Court has also concluded that the four boundaries appearing in the deed of sale deed below Exhibit “3” referred to and relied upon by the Plaintiff are not specific so as to identify the properties.

6. On the issue of Defendants carrying out any alleged illegal construction, the learned Trial Court has clearly opined that the same would be the subject matter before the Competent Authority i.e. Pune Municipal Corporation who would take appropriate action thereon and in the *lis* between the parties, the said issue of illegal construction being carried out by the Defendants would have no relevance. The parties would have to otherwise succeed on the strength and basis of their own documentary evidence in respect of the suit property.

7. The impugned order dated 01.11.2018 is therefore upheld and confirmed. However it is clarified that I have not expressed any opinion on the merits of the matter and all contentions of the Plaintiff are expressly kept open so as to enable the Plaintiff to lead cogent evidence in his witness action.

8. With the above directions, Writ Petition disposed.

[MILIND N. JADHAV, J.]

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