

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5219 OF 2024

Ankush Genu Dhankude & Ors.

.. Petitioners

Versus

Lilabai Dattoba Dhankude & Ors.

.. Respondents

.....

- Mr. Anil Sakhare, Senior Advocate a/w Mr. Kalpesh U. Patil for Petitioners
- Mr. Atul G. Damle, Senior Advocate a/w Mr. Prasad B. Kulkarni & Mr. Ramdas Mulik for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 19, 2024

P. C.:

1. Heard Mr. Sakhare, learned Senior Advocate for Petitioners and Mr. Damle, learned Senior Advocate for Respondents.

2. Order dated 29.01.2024 impugned in the present Writ Petition is an interim order of *status quo* passed by the learned District Court in Misc. Civil Appeal No. 292/2023 which upsets the order passed below Exh. 5 passed by the learned Trial Court. SCS No. 1460/2018 is filed in the year 2018. Suit is for partition and certain declarations. Defendants applied for development of the property in their possession through the developer. Considering the fact that the learned Trial Court had refused Exh. 5 Application of the Plaintiffs, in that view of the matter, Defendants proceeded with development. However the District Court passed the order of *status quo* and *prima facie* it is seen

that the construction of the Defendants which had progressed is halted which is detrimental to the Defendants..

3. Though Mr. Sakhare, learned Senior Advocate would submit that a substantial amount of almost Rs. 6 Crores has been incurred as expenditures by the Defendants for development uptill now, putting an embargo on development after it has commenced would be distressing for the Defendants. Mr. Sakhare would go to the extent of even stating that Defendants be permitted to carry out construction on the suit property and he would be ready and willing to file undertaking that Defendants would abide by the ultimate decision in the Suit proceedings.

4. After hearing Mr. Damle, learned Senior Advocate for the Appellants and more specifically considering the fact that Misc. Civil Appeal has not been determined as yet and the challenge is to an *ad-interim* order, I need not adjudicate on merits. Mr. Damle would inform the Court that submissions on behalf of Appellants have already been completed in MCA proceedings. In that view of the matter, learned District Court is directed by this Court to hear the parties in Misc. Civil Appeal No. 292/2023 and pass a reasoned speaking order within a period of two weeks from today.

5. This Court after hearing both learned Senior Advocates would like to make one more observation. Learned District Court shall not be influenced by any of the observations and findings recorded in the order dated 29.01.2024 of *stauts quo* so as to influence its decision while finally deciding the Misc. Civil Appeal. The decision in the MCA shall be passed on its own merits after hearing the parties strictly in accordance with law and the pleadings *qua* the decision passed by the learned Trial Court below Exh. 5. Needless to state that all contentions of both the parties to agitate in MCA proceedings are expressly kept open.

6. Parties shall appear before the learned District Court along with a server copy of this order to determine the schedule of hearing of the MCA.

7. Copy of the order passed in MCA shall be placed before this Court on 07.05.2024 so as to consider it further.

8. Stand over to **7th May, 2024 at 2:30 p.m.**

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[MILIND N. JADHAV, J.]

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