

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5219 OF 2024
WITH
WRIT PETITION NO.8628 OF 2024

Ankush Genu Dhankude and Ors.

...Petitioners

V/s.

Lilabai Dattoba Dhankude and Ors.

...Respondents

Mr.Anil Sakhare (Senior Advocate) i/b. Mr.Kalpesh Patil:-	Advocate for Petitioners.
Mr.Girish Godbole (Senior Advocate) i/b. Ms.Ketki Gadkari a/w Mr.Aditya A. Joshi:-	Advocates for Respondent Nos.1 to 8 in Writ Petition No.8628 of 2024.

CORAM : S. M. MODAK, J.

DATE : 20th DECEMBER 2024

P. C. :-

1. Heard learned Senior Advocate Shri.Sakhare for the Petitioners and learned Senior Advocate Shri.Godbole for Respondent Nos.1 to 8.
2. The Plaintiffs have failed before the trial Court in seeking a temporary prohibitory injunction. However, they have succeeded before the Appellate Court and that is how, present Petitioners are restrained from carrying out the construction over the suit land. They

have got a sanction / permission from the Local Authority and in fact, they have proceeded with the construction by having excavation for basement purpose.

3. There are submissions and counter submissions about the proper appreciation of material by the Appellate Court. Admittedly, there were suits filed earlier to the present suit. Both of them want to rely upon some of the pleadings and findings specifically in respect of certain Agreements executed and alleged to be executed in the month of June-1988. It is in respect of division of the land bearing Survey No.28/1. According to the present Petitioners, the area of 21 R had come to their share and an area of 24R had gone to the share of the branch of Chabbu and as such, the Plaintiff was not allotted any share. This is a case of the Petitioners.

4. Whereas, the Respondent-Plaintiff contends that there was one more Agreement to which, the Legal Representatives of Baban were the parties. It is the case put up by the Petitioners. By the said Agreement, those Legal Representatives were not given any share. **Whereas, according to the Plaintiffs, this Agreement was forged one.**

5. So, while hearing this Petition, the Court is required to consider all these findings and the documents and pleadings.

6. Learned Senior Advocate Shri.Sakhare has explained the nature of the construction sanctioned by the Local Authority with the help of plan.

7. All the Plaintiffs are some of the Respondents. They are represented and learned Senior Advocate Shri.Godbole is going to argue for them. There are also other Respondents who are the co-defendants. According to Mr.Godbole, they need to be served of this Writ Petition. Because, in the partition suit, they are the co-plaintiffs only. According to learned Senior Advocate Shri.Sakhare, before the trial Court, they have not filed any independent reply and it is nowhere reflected in the order passed by both the Courts below.

8. It is true that the Writ Petition has to be decided on the basis of pleadings before the trial Court. If, learned Senior Advocate Shri.Godbole is having instructions that they have filed an Affidavit before the trial Court supporting the Plaintiffs, he is at liberty to file its copy on record.

9. In view of that, stand over to **14th January 2025**. To be listed for “**Directions**”.

[S. M. MODAK, J.]