

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5373 OF 2025

Vijay Ramesh Mohite and Anr. ... Petitioners

V/s.

Anil Prabhakar Mohite and Ors. ... Respondents

Mr. Anil Sakhare, Senior Advocate i/by Kalpesh Patil, for the petitioners.

Mr. Akshay Petkar a/w Aniket Malu and Aditya Hegde, for respondents.

CORAM : N.J. JAMADAR, J.

DATE : 29TH APRIL 2025.

ORAL ORDER:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 27th March 2022 passed by the learned District Judge, Sangli in Miscellaneous Civil Appeal No. 231 of 2023, whereby the appeal preferred by the petitioners/plaintiffs, aggrieved by an order of rejection of an application for temporary injunction, passed by the Trial Court in Regular Civil Suit No. 46 of 2020, came to be dismissed.
3. In fact, this is a second round of litigation before this Court. Initially, the Trial Court had granted an order of status quo. The plaintiffs had referred an appeal before the District Judge purportedly against an order issuing notice and declining to grant ad-interim relief.

The learned District Judge in Miscellaneous Civil Appeal No. 119 of 2020 had restrained the respondents from demolishing the disputed bund and pathway, till the decision on the application for temporary injunction (Exhibit-5), in the said suit.

4. Eventually, by an order dated 20th January 2022, the learned Civil Judge rejected the application for temporary injunction. An appeal there-against, being Miscellaneous Civil Appeal No. 18 of 2022, was also dismissed by learned District Judge. In Writ Petition No. 3492 of 2022, this Court was persuaded to grant interim protection and remit the application for temporary injunction (Exhibit-5) to the Trial Court for a fresh decision while directing the appointment of the Cadastral Surveyor as a Court Commissioner to have a joint measurement of the lands in dispute and submit a report to the Court.

5. Upon remittance of the matter to the Trial Court, the Cadastral Surveyor came to be appointed by an order dated 18th April 2022, on an application filed on behalf of the defendant nos. 1 to 3. Cadastral Surveyor submitted a report which indicated that the plaintiffs were in possession of an area admeasuring 1 R out of the land bearing Gat No. 907 belonging to the defendants. The petitioners filed an objection to the report of the Court Commissioner.

6. By an order dated 12th December 2023, the learned Civil Judge again rejected the application of temporary injunction. It was, inter alia, recorded that the plaintiffs failed to establish prima facie possession over the suit bund. There was a cloud over the title of the plaintiffs over the disputed land. Thus, it was necessary for the plaintiffs to seek relief of declaration as well.

7. The learned District Judge did not find any reason to interfere with the exercise of discretion by the Trial Court.

8. Mr. Sakhare, learned Senior Advocate for the petitioner, submitted that the injunction has been in operation since the year 2020. The objection raised by the petitioners to the Court Commissioner's Report has not been adequately dealt with by the Courts below. The Trial Court has incorrectly proceeded on the premise that the suit for injunction simplicitor was not maintainable when this Court by an order dated 28th March 2022 in Writ Petition 3492 of 2022, had already dealt with the said aspect of the matter and observed that the challenge to the title of the plaintiffs appeared to be evasive.

9. The learned District Judge, according to Mr. Sakhare, was swayed by the conduct of the petitioners in preferring an appeal against the order passed during the pendency of the application for temporary injunction. However, thereafter, the Civil Court decided the application for temporary injunction. Thus, according to Mr. Sakhare, the Appellate Court could not have delved into the said aspect of the matter and denied the relief of injunction.

10. The learned counsel for the respondents supported the impugned order. It was submitted that the observations of the learned District Judge with regard to the conduct of the petitioners are borne out by the material on record. Despite having obtained an order of status quo, the petitioners had preferred Miscellaneous Appeal against the prior order and obtained an order of injunction till the decision of the application for temporary injunction.

11. Likewise, despite the directions by this Court, the petitioner failed to deposit the charges of the Court Commissioner and, thus, the Courts below were justified in drawing an adverse inference, which this Court had permitted the trial Court to draw, in the event of default on the part of the parties to deposit the charges. All these aspects are required to be appreciated in the light of the fact that the plaintiffs had failed to establish *prima facie* title over the suit bund, urged learned counsel for the respondents.

12. I have carefully perused the material on record. Evidently, in the backdrop of the nature of the dispute, which essentially revolves around the demarcation of the boundaries between the lands of the parties, this Court had considered it appropriate to appoint the Court Commissioner and have a joint measurement of the land. The report of the Cadastral Surveyor records that the plaintiffs have committed encroachment of an area admeasuring 1 R over the land of the respondent. Another encroachment at the hands of the plaintiffs over the land of another adjacent land owner has also been shown therein.

13. In a situation of this nature, where there is *prima facie* material on record to show that the disputed bund does not fall within the land of the plaintiffs, the Courts below were justified in returning the findings that the petitioners failed to make out a *prima facie* case.

14. The fact that the petitioners have instituted a suit for injunction simplicitor may not have been of decisive significance at the stage of consideration of application for temporary injunction. However, the position which emerges after the Cadastral Surveyor measured the suit land and submitted the report, cannot be lost sight

of. To put it in other words, the trial Court and Appellate Court have recorded a prima facie finding on the basis of objective material that the plaintiffs are not in possession of disputed bund and pathway and, in fact, the plaintiffs have allegedly committed encroachment over the land of the defendants and other adjacent land holders. Such prima facie findings are not open for interference in exercise of supervisory jurisdiction.

15. In these circumstances, no interference is warranted in the impugned order.

16. The petition stands dismissed.

(N.J. JAMADAR, J)