

Shabnoor

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

WRIT PETITION NO.7041 OF 2023

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Vijay Ramchandra Pawar & Ors.

... Petitioners

V/s.

Milind Vithalrao Bakshi & Anr.

... Respondents

Mr. Sameer S. Kadam for petitioners.

Mr. Hemant P. Ghadigaonkar for respondents.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 17, 2025

P.C.:

1. The petitioners/original plaintiffs filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking an injunction to restrain the defendants from carrying out construction over the suit property. It is the case of the petitioners that the defendants, who purchased the property from their vendors in the year 2021, have encroached upon a portion of the property claimed to be owned by the petitioners. The petitioners further contend that such encroachment violates their ownership rights and deprives them of lawful possession.

2. According to the petitioners, their uncle had sold a specific part of the suit property to the defendants' vendor through a registered sale deed in the year 1981. The petitioners assert that

the defendants, while constructing on the property purchased by them, have encroached upon a portion of the property retained by the petitioners. They contend that such encroachment is illegal and, therefore, seek to restrain the defendants from carrying out any further construction over the disputed portion of the suit property, pending the final adjudication of their title and possession.

3. The Trial Court, after considering the pleadings and prima facie evidence, granted a temporary injunction under Order XXXIX Rules 1 and 2 CPC, restraining the respondents from altering the nature of the suit property. However, on appeal under Order XLIII Rule 1(r) CPC, the Appellate Court, upon re-evaluating the material on record, allowed the appeal and rejected the application for temporary injunction. The Appellate Court observed that the balance of convenience and irreparable injury leaned in favor of the defendants, provided they adhered to certain safeguards, including the filing of an undertaking.

4. On perusal of the material on record, it is evident that the issue of whether the defendants have encroached upon the suit property is a matter that requires adjudication by the Trial Court after both sides are granted liberty to lead evidence. The apprehension expressed by the petitioners regarding the change in the nature of the suit property has already been addressed by the Trial Court, which directed the defendants to file an undertaking to the effect that they would abide by the outcome of the suit. The defendants have already filed such an undertaking, stating that in the event the plaintiffs succeed, the defendants would remove any

construction carried out on the suit property without claiming any equity. Therefore, in light of the safeguards imposed by the Appellate Court and the absence of any exceptional circumstances warranting interference under Article 227 of the Constitution of India, I am of the view that no interference is called for at this stage.

5. The writ petition stands disposed of in the above terms. All observations made herein are limited to the adjudication of this writ petition and shall not affect the merits of the case before the Trial Court. No order as to costs.

(AMIT BORKAR, J.)