

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3288 OF 2025

Akhatarali Aliahmed Ansari and Anr. ...Petitioners
vs.
Ajay Sonu Raut ...Respondent

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Mr. Jamshed Ansari, for the Petitioners
Mr. Rahul Motkari a/w. Ms. Manasi Pawar, for Respondent.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 13, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to a judgment and order dated 20th January, 2024 passed by the learned District Judge, Nashik whereby the appeal preferred by the respondent/ defendant against an order passed by the learned Civil Judge restraining the respondent/ defendant from causing obstruction to the possession and enjoyment of the plaintiff/ petitioner over Gat No. 70 in terms of the map dated 26th October, 2023, came to be set aside and the appeal was allowed.
3. The petitioner instituted a suit for perpetual injunction restraining the defendant from causing obstruction to the possession and enjoyment of the plaintiff over the suit property bearing Gat No. 70 and committing encroachment over the portion

of the said property as demarcated in the map dated 26th October, 2023.

4. In the said suit, the plaintiff preferred an application for temporary injunction. By an order dated 21st May, 2024 the defendant/ respondent was restrained from causing obstruction to the possession and enjoyment of the plaintiff over Gat No. 70, as demarcated by the map dated 26th October, 2023, and from carrying out construction in the said property.

5. In the appeal, the learned District Judge was persuaded to set aside the said order observing that, there was a boundary dispute between the plaintiff and the defendant. Both had a private and separate measurement of their lands i.e. Gat Nos. 70 and 71. In the absence of joint measurement, it would not be possible to decide the aspect of encroachment. Therefore, the trial Court could not have granted injunction on the basis of map placed on record by the plaintiff and the photographs.

6. The view of the learned District Judge cannot be said to be unsustainable. It is trite law that in the case of boundary dispute, it is necessary to have a joint measurement of both the properties so as to correctly demarcate the area of land of each of the properties and ascertain encroachment, if any. Separate measurement of one of the properties does not reveal the correct position as regards the

alleged encroachment. A useful reference in this context can be made to the decision of the Supreme Court in the case of **Haryana Waqf Board vs. Shanti Sarup and Others**¹.

7. The position, which, however, obtains in the case at hand is that the defendant is intending to carry out the construction. If the construction is erected, it might impair the rights of the plaintiff in the event it turns out that the land over which the construction is erected forms part of Gat No. 70. The Court is informed that the plaintiffs have filed an application for appointment of the Court Commissioner to have a joint measurement of Gat Nos. 70 and 71 and the said application is subjudice before the trial Court.

8. In this view of the matter, it would be expedient in the interest of justice that the trial Court appoints the Deputy Superintendent of Land Record as a Court Commissioner to jointly measure the land bearing Gat Nos. 70 and 71 and after the report is obtained, the application for temporary injunction is decided afresh. Thus, both the orders passed by the District Court as well as the trial Court deserve to be quashed and set aside and the application for temporary injunction remitted back to the trial Court for afresh decision after the Court Commissioner submits his report. In the meanwhile, the parties need to be directed to maintain the status-quo as it obtains today.

1 AIR 2008 SC (SUPP) 616.

Hence, the following order.

ORDER

- 1] The petition stands allowed.
- 2] The impugned order dated 20th January, 2025 as well as the order passed by the trial Court on the application for temporary injunction dated 21st May, 2024 stand quashed and set aside.
- 3] The Application for temporary injunction (Exh.5) stands restored to file of the trial Court.
- 4] The trial Court is requested to pass an appropriate order on the application for appointment of the Court Commissioner and direct the Dy. Superintendent of Land Records to jointly measure the land bearing Gat Nos. 70 and 71 and submit a report to the trial Court within a period of two months from the date of the passing of the said order.
- 5] After such report of the Court Commissioner is received, the trial Court shall decide the application for temporary injunction (Exh.5) afresh after providing an opportunity of hearing to the parties.
- 6] In the meanwhile, till the decision on the application for temporary injunction, the parties shall maintain the

status-quo as it obtains today.

7] The trial Court is requested to make an endeavour to hear and decide the application (Exh.5) as expeditiously as possible.

8] All contentions of the parties are kept open for consideration.

9] It is hereby made clear that this Court may not be understood to have expressed any opinion on the merits of the matter.

Petition disposed.

(N. J. JAMADAR, J.)