IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7863 OF 2024

Satish Govindrao Chavan and others .. Petitioners

Versus

Jayvantrao Jaysingrao Chavan .. Respondent

Shri Aditya S. Raktade, Advocate a/w Shri Sudhir N. Patil, Advocate for the Petitioners.
Shri Utkarsh Desai, Advocate i/by Shri P. S. Bhavke, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.
DATE : 15TH OCTOBER, 2026.

FINAL ORDER :

. Heard both sides.

2. The petition can be taken up for final disposal with the consent of the parties.

3. The judgment and order dated 23.08.2024 passed by the learned Additional District Judge – 1, Sangli in Misc. Civil Appeal No. 152 of 2023 is challenged by the original defendants by which injunction is clamped against them.

4. The respondent has filed R.C.S. No. 230 of 2023 for injunction along with application Exhibit 05 for temporary

injunction. The subject matter is open space or common passage having 4 feet width located in between two houses on the Southern side of City Survey No. 13. The parties are litigating for this common passage. According to the plaintiff, defendants are encroaching upon the common passage and making construction.

5. The claim is countered by the petitioners – defendants stating that the construction is being made within the premises belonging to them. There is no construction in the common passage. Rather construction is stated to be on the front side. The alleged common passage is located on the back side of the properties.

6. The Trial Court rejected application Exhibit 05 on 31.07.2023. Being aggrieved, misc. Civil appeal was preferred by the respondent – plaintiff. The Appellate Court granted temporary injunction in the following manner :

ORDER

1. Misc. Civil Appeal No.152/2023 is hereby allowed.

2. The order passed by 7th Jt. Civil Judge Jr.Dn., Sangli below Exh.5 in R.C.S.No.230/2023 dated 31.07.2023 is hereby set aside and modified.

3. The temporary injunction application Exh.5 is hereby allowed to the extent of only open space between two houses.

4. The respondents/original defendants are hereby restrained from obstructing the use of way on the open space between two houses, till disposal of the original suit.

5. Both parties may proceed the original suit as early as possible.

6. Both parties to bear their own costs.

7. Accordingly appeal is disposed of.

7. I have considered rival submissions of the parties. The learned counsel for the petitioners Mr. Raktade would submit that his clients are staying in the rented premises and injunction clamped against them has stalled the construction. The plea of partition pressed into service is disputed. The construction is totally on the front side without making any encroachment. It is further pointed out that the petitioners have incurred loan for the construction.

8. Per contra, learned counsel for the respondent supports the impugned order. It is submitted that under the garb of construction on the front side, the petitioners are constructing in the common passage located on the back southern side of CTS No. 13. The common passage needs to be kept open.

9. With the assistance of the parties I have gone through the photographs placed on record by both the sides. I have also gone through the rough sketch map filed by the respondent – plaintiff.

The parties are relatives and they are occupying self same CTS No. 13. The plaint refers to southern side open passage having width of 4 feet, which is in between their houses.

10. Having taken into account submissions and the documents produced before this Court what is creating confusion is the location of the common passage. It is not made clear either in the pleadings or in the impugned judgment and order as to its location. Both the parties are at *ad-idem* for existence of common passage having width of 4 feet in between their houses. It transpires from their submissions that the common passage is located on the back side of CTS No. 13, which is southern side. The petitioners are making construction mainly on the front side which is evident from the map. It is candidly made clear by the learned counsel Mr. Raktade for the petitioners that his clients are not making any construction on common passage, which is located on back side of CTS No. 13.

11. If this is the situation, then the respondent – plaintiff can have no objection for the construction, which is being carried out predominantly on the front side of CTS No. 13, which is towards northern. The petitioners are not causing any encroachment or construction on the southern side of common passage. This arrangement can be maintained till the final disposal of the suit.

12. I propose to substitute the judgment and order passed by the Courts below by following order.

O R D E R

A. The petitioners shall not carry out any construction or encroachment on the common passage having width of 4 feet located on the southern side which is towards back side of CTS No. 13 till the disposal of the suit.

B. The petitioners shall be at liberty to carry out the construction as is permissible in law at their own risk, which shall be subject to out come of the suit.

C. The proceedings of the suit are expedited.

[SHAILESH P. BRAHME J.]

bsb/Oct. 26