

Order below Exh. 22

This is an application filed by plaintiffs seeking direction of the Court against defendant nos. 1 and 2 to maintain status quo. Ld. Advocate for defendant no. 2 filed her say and taken strong objection to this application.

2. It is averted by plaintiffs that, defendant nos. 1 and 2 trying to carry out illegal construction over suit property. Notice of the suit was served on defendant no. 2, other defendants denied to take service of the notice. Defendants carried out construction without taking prior permission of local authority. If construction not stop then irreparable loss may be cause to plaintiff. Hence it is necessary to impose restrictions on defendant nos. 1 and 2. Hence plaintiff prayed that, Order of status quo may please be granted till appearance of defendant no. 1 and filing of say on application below exh. 5 by defendant nos. 1 and 2.

3. Learned advocate for defendant no. 2 filed say and contended that, suit property previously owned and possessed by defendant no. 1. On 24/04/1989 permission of construction was given by local authority. Prior to said permission plaintiff was paying tax of said property. On 03/03/1997 local authority given permission to defendant no. 1 to construct the house. Name of defendant nos. 1 and 3 shown in

the assessment extract of the suit property. Hence status quo may please be not granted.

4. Heard learned advocate Shri. V.T. Mhatre. He submitted that, in respect of some portion name of plaintiff is appeared in the assessment extract. Now defendant nos. 1 and 2 trying to encroach over suit property by construction house. He read over letter of local authority dated 17/01/2019, 26/03/2019 and 16/10/2019. He further submitted that, defendant nos. 1 and 2 are not law abiding persons. They do not interested to follow instructions given by local authority. Hence, he prayed to pass an Order of status quo.

5. Heard learned advocate Smt. Manasi Deshpande for defendant no. 2. She submitted that, suit property was already sold. There was a construction over said portion of property since last 24 years. There is no reason to file this suit in the Court law after such period. Suit property was transferred by defendant no. 1 to defendant no. 3 by exhibiting gift deed. Hence, there is no reason to file this suit against defendant no. 1. Hand map filed along with suit is not verified by concern authority. Plaintiffs are not owner of the suit property. Plaintiffs failed to shown necessity. During the trial of the suit evidence may come on record. Hence she prayed to reject the application.

6. Considering submission and documents on record, it seems

that, there is the dispute between the parties in respect of construction carried out. After perusal of letter of concern local authority dated 17/01/2019, 26/03/2019 and 16/10/2019 it seems that, concern local authority does not given proper permission of the construction. Concern local authority tried its level best and make endeavor to give direction to the persons concern and ask for the documents in respect of permission of construction. From the contents of said documents it seems that, construction is still continuing, though said concern authority given direction to stop construction.

7. Whether said construction is on suit property or not ? Whether concern person taken prior permission from concern authority or not ? Are questions of fact. For that purpose it is necessary that both the parties filed evidence on record to that respect. On the other hand it is also necessary that, the construction is going on. If it is over suit property and construction continues then irreparable loss may be cause to plaintiffs. If it is not over suit property and construction stopped then no irreparable loss may be cause to defendant nos. 1 and 2. There is no need to go in the roots of the matter. Hence in the interest of justice and for above mentioned reasons I pass following Order -

ORDER

1. Application below exh. 22 is allowed.
2. Defendant nos. 1 and 2 are directed to maintain status quo till filing their say on application for interim injunction.

3. Plaintiff is directed to take efforts to serve the notice of the suit and this Order to defendant no. 1.

Date : 01.11.2019

Place: Khalapur

(Vishal Shravan Dhondage)
Jt. Civil Judge Junior Division