

VRJ

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

WRIT PETITION NO.10616 OF 2023

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Ganesh Yaduraj Mhatre & Ors.

... Petitioners

V/s.

Shirish Vishnu Mhatre

... Respondent

Mr. Dushyant Pagare for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 31, 2023

P.C.:

1. Challenge in this petition is to clause 6 of order dated 12th April 2023 passed by the District Judge-2, Panvel in Miscellaneous Civil Appeal No.1 of 2023.

2. According to learned advocate for the petitioners, suit is filed for declaration that defendant Nos.1 and 2 are not owners of suit property and have no right over the suit property. Additionally, permanent injunction is sought against defendant Nos.1 and 2 from disturbing the plaintiff's possession over the suit property and restraining defendant Nos.1 and 2 from creating third party rights over suit property.

3. The trial Court rejected the application. On an appeal filed by the plaintiff the appellate Court partly allowed the appeal. In addition to granting injunction for carrying out construction over

the suit property and disturbing possession of the plaintiff over the suit property, the appellate Court granted liberty to the plaintiff to file application for mandatory injunction.

4. Considering the frame of suit, such liberty would not create right in favour of the plaintiff unless and until there are necessary pleadings and permanent relief sought in the plaint.

5. With this clarification, no interference under Article 227 of the Constitution of India is called for. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)