

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 27<sup>th</sup> OF JUNE, 2023**

**MISC. PETITION No. 5429 of 2022**

**BETWEEN:-**

1. JAGDISH S/O BHERULAL, AGED ABOUT 55 YEARS,  
OCCUPATION: BUSINESS GRAM AND TEHSIL SARDARPUR,  
DISTRICT DHAR (MADHYA PRADESH)
2. AMRITLAL S/O BHERULAL, AGED ABOUT 75 YEARS,  
OCCUPATION: BUSINESS R/O GRAM TEHSIL SARDARPUR DIST.  
DHAR (MADHYA PRADESH)
3. MANOHAR @ MUNNALAL S/O BHERULAL, AGED ABOUT 52  
YEARS, OCCUPATION: BUSINESS GRAM AND TEHSIL  
SARDARPUR, DISTRICT DHAR (MADHYA PRADESH)
4. NARAYAN S/O BHERULAL, AGED ABOUT 50 YEARS,  
OCCUPATION: BUSINESS R/O GRAM AND TEHSIL SARDARPUR  
DIST. DHAR (MADHYA PRADESH)

**.....PETITIONERS**

*(MS. NIDHI BOHARA, ADVOCATE)*

**AND**

1. SARJUBAI W/O KAILASH, AGED ABOUT 48 YEARS,  
OCCUPATION: HOUSEHOLD WORK GRAM DATTIGAON, AT  
PRESENT- RAJENDRA COLONY RAJGARH TEHSIL SARDARPUR  
DISTRICT DHAR (MADHYA PRADESH)  
KAILASH S/O BABULAL, AGED ABOUT 52 YEARS, R/O GRAM
2. DATTIGAON, AT PRESENT RAJENDRA COLONY RAJGARH  
TEHSIL SARDARPUR DIST. DHAR (MADHYA PRADESH)

**.....RESPONDENTS**

*(SHRI SIDDHARTH JAIN, ADVOCATE)*

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*This petition coming on for order this day, the court passed the following:*

**ORDER**

This miscellaneous petition has been filed by the petitioners/defendants under Article 227 of the Constitution of India against the order dated 13.09.2022, in Civil Appeal No.1/2021 passed by the Additional Judge of the Court of First Additional District Judge Sardarpur Jobat, Distrit Dhar whereby, the order dated 18.01.2021, passed by the Second Civil Judge, Class II, Sardarpur Jobat, Distrit Dhar in Civil Suit No.116-A/2017, has been affirmed. The order relates to an application filed by the respondents/plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”).

2. In brief, facts of the case is that the plaintiffs/respondents have filed a suit for mandatory and permanent injunction against the defendants/petitioners in respect of the disputed land which according to the plaintiffs was purchased by them through a registered sale deed whereas the defendants' contention is that they have also purchased an adjoining land adjacent to the land of the plaintiffs. In the aforesaid suit an application filed by the petitioners under Order 39 Rule 1 and 2 of the CPC in the year 2017 has been decided by the learned judge of the trial Court vide its order dated 18/01/2021, i.e, after a period of around three and half years directing the defendants not to interfere in the possession of the

plaintiffs in any manner. The aforesaid order was challenged by the defendants in the appeal and the First Appellate Court vide its order dated 13.09.2022, has affirmed the order passed by the Trial Court.

3. Counsel for the petitioners has submitted that both the Courts below have erred in holding that the plaintiffs are in possession of plot no.10 despite the fact that the sale deed on which the plaintiffs have relied upon, plot no.10 is not even referred to. It is also submitted that on the basis of the injunction order now the plaintiffs have started to interfere with the defendant's possession of his own land.

4. Counsel for the respondents/plaintiffs on the other-hand has opposed the prayer and has submitted that the plaintiffs have purchased the aforesaid plot in the year 2016 by a registered sale deed and possession of the same was also given to the plaintiffs and thus, no illegality has been committed by both the Courts below by allowing the injunction application.

5. Heard counsel for the parties and perused the record.

6. On due consideration of the rival submissions and on perusal of the documents filed on record, including the sale deed of the plaintiffs, it is found that there is no mention of plot no.10 in the aforesaid sale deed and even otherwise, this Court is of the considered opinion that if the civil suit was filed in the year 2017 the application for temporary injunction cannot be allowed in the year, 2021 by directing the defendants not to interfere in the plaintiffs' possession. This Court is of the considered opinion that

such delay in deciding the application for temporary injunction clearly defeats the very purpose for which such applications are filed. Delay also allows the party to manipulate their positions before an order is passed. In such circumstances, even if the order passed by the trial Court has been affirmed by the Appellate Court vide impugned order dated 13.09.2022, this Court is of the considered opinion that the orders cannot be sustained in the eyes of law.

7. In view of the same, the miscellaneous petition **stands allowed** and the impugned order dated 13.09.2022 is hereby set aside.

8. However, it is directed that the parties shall maintain the status quo as on today, and, since the suit is already filed in the year 2017, the learned judge of the Trial Court is also requested to expedite the matter and conclude the same at the earliest.

**(SUBODH ABHYANKAR)**  
**JUDGE**

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