

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

WRIT PETITION NO. 5746 OF 2014

Parvatibai Hanumantrao Birajdar
and Anr.

..Petitioners

Vs

Sangameshwar Swaminath
Khune and Anr

.. Respondents

Mr. Vivekanand S. Tadake, Advocate for Petitioners.
Mr.Rajshekhar S. Alange, Advocate for Respondents no.1 and 2.

CORAM : R.G.KETKAR,J.
DATE : 17/06/2015

PC:

1. Heard Mr. Vivekanand Tadake, learned counsel for the petitioners and Mr. Rajshekhar Alange, learned counsel for the respondents no.1 and 2 at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners-original plaintiffs have challenged the Judgment and order dated 18.3.2014 passed by the learned Civil Judge, Jr.Dn., Akkalkot below Exh.5 in Regular Civil Suit No.3 of 2014 as also the Judgment and order dated 10.4.2014 passed by the learned District Judge-I, Solapur in Civil Misc. Appeal No.71 of 2014. By these orders, the Courts below dismissed the application taken out by the petitioners for injunction restraining the defendants from prohibiting the petitioners from using the

suit way. Mr. Tadake invited my attention to the findings recorded by the trial Court and in particular paragraph 7. He submitted that in the sale deed executed in favour of the plaintiffs that the plaintiffs have right of way from bandh in the middle of Gat no 543 and 544 belonging to the defendants. He submitted that the Courts below committed error in not appreciating the recitals in the sale deed as also affidavits relied by the plaintiffs in support of their case. These facts clearly show that the plaintiffs are using the way from Gat No.543 and 544.

3. On the other hand, Mr. Alange supported the impugned orders. He submitted that the Courts below considered Commissioner's report which was accepted by both the parties. After considering the material on record, the Courts below have held that the plaintiffs have prima facie case to show existence of the disputed way shown by letters A and B in the sketch map attached to the Plaint. On the other hand, since 2003 the plaintiffs are using the alternative way to approach their field.

4. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Both the Courts below, after considering the material on record including Commissioner's report, have prima facie come to the conclusion that the plaintiffs have failed to show the existence of disputed way shown by letters A and

B in the sketch map attached to the Plaint. It is also observed that the plaintiffs are using alternative way to approach their field. In view thereof, I do not find that the Courts below have committed any error in passing the impugned orders. Petition fails and is dismissed. Liberty is reserved to the petitioners to move trial Court for expeditious disposal of the suit. If such application is made, learned trial Judge will pass appropriate orders thereto.

(R.G.KETKAR, J.)