

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 607 OF 2015**

**Arun Tukaram Shitape & Ors.**

**..Petitioners**

**Vs.**

**Vasant Jagannath Shitape**

**..Respondent**

**Mr. Umesh Mankapure for the Petitioners**

**Mr. Mahindra Deshmukh for the Respondent**

**CORAM : R. M. SAVANT, J.  
DATE : 22<sup>nd</sup> JANUARY, 2015**

**P.C.**

1           The Writ Jurisdiction of this Court is invoked against the order dated 12-12-2014 passed by the Learned Ad-hoc District Judge-1, Sangli, by which order the Appeal in question being Misc Civil Appeal No.214 of 2013 filed by the Petitioners came to be dismissed and resultantly the order dated 30-10-2013 passed by the Trial Court came to be confirmed.

2           The Suit in question being Regular Civil Suit No.65 of 2013 has been filed by the Respondent No.1 / Plaintiff. The main relief sought therein is that the road mentioned in clause (1) of the plaint, the Defendants be restrained from preventing the Plaintiff from using the said road for ingress and egress as also from using the said road for transportation of goods. The controversy is as regards the road which runs in a North / South direction and traverses through Gat No.97 and along the boundaries of the petrol pump of

the Defendants i.e. the Petitioners herein which is in Gat No.97(b). The Petitioners herein for better appreciation of the controversy have produced a common sketch of the lands and have depicted the disputed road by a red colour therein. In the said map, the Petitioners have also shown the existence of a road which they claim is of 10ft dividing Gat No.113 which is to the North/Western side of Gat No.97(b). However, it is the case of the Plaintiff that though he is a party and has consented to the carving out the said road out of Gat No.113, the same is only a temporary arrangement. The Plaintiff claims right over the suit road in the said Gat No.97(b) on the basis of a family arrangement. It is the case of the Plaintiff that the said road is the only road for the Plaintiff to access the Karad-Tasgaon road which is on the Southern side of the disputed road.

3           In the said Suit, the Plaintiff filed an application for temporary injunction. The said application was opposed to on behalf of the Plaintiff i.e. the Respondent herein. The Trial Court allowed the said application for injunction. The order of the Trial Court is based on the Sale Deeds which is executed in favour of the Plaintiff by the Defendant No.3, Dilip Shitape. The Trial Court came to a conclusion that the said road is in existence for the last 70 to 80 years. The Trial Court also observed that on 28-3-2013, the Defendants tried to obstruct the road. The Trial Court further observed that the apprehension of the Plaintiff that the Defendants would construct on the

Eastern Side and thereby obstruct the road was justified. The Trial Court therefore held that the Plaintiff had made out a prima facie case and that since the Plaintiff is using the road since 1995-1996, the balance of convenience was also in favour of the Plaintiff. The Trial Court accordingly by order dated 30-10-2013 has allowed the said application for injunction.

4           The Defendants aggrieved by the said order dated 30-10-2013 filed Misc Civil Appeal No.214 of 2013. The Lower Appellate Court has by a cryptic order dated 11-7-2014 had allowed the Appeal and thereby set aside the order passed by the Trial Court granting injunction. The said order dated 11-7-2014 was carried to this Court and challenged by way of Writ Petition st. No.22313 of 2014. This Court having regard to the manner in which the order was passed by the Lower Appellate Court had set aside the order dated 11-7-2014 and remanded the matter back to the Lower Appellate Court for a denovo consideration of the Appeal in terms of the observations in the order dated 17-9-2014 passed by this Court. It is on remand that the impugned order dated 12-12-2014 has been passed by the Lower Appellate Court. Though the Lower Appellate Court had only frame one issue, the Lower Appellate Court as the impugned order discloses has gone thread bare into the material placed on record and on such consideration has come to a conclusion that the order passed by the Trial Court injunction the Defendants from obstructing the Plaintiff from using the road which is to the Eastern side of Gat No.97 along

the side of the petrol pump in Gat No.97(b) need not be interfered with. The Lower Appellate Court as can be seen from the impugned order has considered the registered Sale Deed in favour of the Plaintiff. The photographs as also the evidence which were placed on record and as also considering the alternate way which was pleaded by the Petitioners / Defendants. It is on a consideration of the said material that the lower Appellate Court came to a conclusion that the order passed by the Trial Court was required to be confirmed.

5           The Learned Counsel for the Petitioner sought to contend that though this Court had remanded the matter back to the lower Appellate Court for a denovo consideration. On remand also the lower Appellate Court has not followed the mandate of this Court as contained in its order dated 17-9-2014 and has decided the Appeal. The Learned Counsel would contend that the Plaintiff has an alternate road which divides the said Gat No.113 and which joined to the road on the Western side of Gat No.97.

6           In my view, in so far as the first contention of the Learned Counsel for the Petitioner is concerned, as indicated above, the lower Appellate Court has gone threadbare into the material placed on record and has thereafter considering the said material recorded findings in favour of the Plaintiff. In so far as the second contention is concerned, the lower Appellate Court has also referred to the said contention in paragraphs 7 of the impugned order and has

discountenanced the said contention. Having regard to the concurrent orders passed by the Courts below, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7           Needless to state that the observations made in the impugned order as well as the instant order are only for the purposes of considering the application for temporary injunction. The Suit would be tried on its own merits and in accordance with law. In the facts and circumstances of the case, the hearing of the Suit is expedited.

**[R.M.SAVANT, J]**