

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3381 OF 2015

Premchand Ratanlal Jain and others ... Petitioners
Vs.
Vikaskumar Gayanchand Jain and others ... Respondents

WITH
WRIT PETITION NO.3636 OF 2015

Premchand Ratanlal Jain and others ... Petitioners
Vs.
Gayanchand Vikaskumar Jain and others ... Respondents

Mr. Umesh G. Dindore for Petitioners.
Mr. Pralhad D. Paranjape for Respondents No.1 and 2 in WP 3381 of 2015
and Respondents No.2 and 3 in WP 3636 of 2015.
Ms Neha Bhide for Respondent No.3 in WP 3381 of 2015 and Respondent
No.1 in WP 3636 of 2015.

CORAM : R. G. KETKAR, J.
DATE : 17TH JULY, 2015

P.C. :

By consent of the parties, Writ Petition No.3636 of 2015 is taken on record. Heard Mr. Dindore, learned Counsel for petitioners in both the Petitions, Mr. Paranjape, learned Counsel for respondents No.1 and 2 in WP 3381 of 2015 and respondents No.2 and 3 in WP 3636 of 2015 and Ms Bhide for respondent No.3 in WP 3381 of 2015 and respondent No.1 in WP 3636 of 2015 at length.

2. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing. These Petitions are preferred by the original plaintiffs challenging the judgment and orders dated 16.01.2015 passed by the learned District Judge-18, Pune

in Miscellaneous Civil Appeal No.241 of 2014 (in W.P. No.3381 of 2015) as also in Miscellaneous Civil Appeal No.245 of 2014 (in W.P.No.3636 of 2015). By these orders, the learned District Judge allowed the Miscellaneous Civil Appeal No.241 of 2014 filed by respondents No.1 and 2 (hereinafter be referred to as the defendants No.2 and 3) as also Miscellaneous Civil Appeal No.245 of 2014 filed by respondent No.3 (hereinafter be referred to as the defendant No.1) and quashed and set aside the judgment and order dated 03.05.2014 passed by the learned Civil Judge, Junior Division, Vadgaon, Maval below exhibit-5 in Regular Civil Suit No.50 of 2014. Since the common questions of law and fact are arising in these Petitions, the same can be conveniently be disposed of by this order.

3. Plaintiffs have instituted Regular Civil Suit No.50 of 2014 for perpetual injunction restraining the defendants from prohibiting them from using the way constructed at their expenses through lands bearing Gat No.48, 93, 94 and 96 owned by the defendants for approaching to their property namely Gat No.46, 49 and 50. During the pendency of the Suit, plaintiffs took out application exhibit-5 for temporary injunction restraining the defendants from causing obstruction to the plaintiffs from the user of the common road, which is existing from Gat No.48, 93, 94 and 96 till Gat No.49. The learned trial Judge allowed the application on 03.05.2014 and issued injunction restraining the defendants from obstructing the plaintiffs from using the common road as specified in paragraph 1 of the plaint. Aggrieved by that decision, defendant No.1 and defendants No.2 and 3 preferred separate Appeals. By the impugned orders, the learned District Judge allowed the Appeals as indicated earlier.

4. I have heard the learned Counsel appearing for the parties at

length. During the course of hearing, Mr. Paranjape, appearing for defendants No.2 and 3, upon taking instructions from the instructing Advocate Mr. Bhandari, submitted that defendants No.2 and 3 consent for setting aside the impugned order. Ms Bhide, learned Counsel appearing for defendant No.3, upon taking telephonic instructions, also consents for setting aside the impugned order. There is a consensus among the learned Counsel appearing for the parties that during the pendency of the Appeal, the trial Court's order was not stayed.

5. In view thereof, by consent of the parties, Petitions are disposed of, in the following terms:

- a. The impugned orders dated 16.01.2015 passed in Miscellaneous Civil Appeals No.241 of 2015 and 245 of 2015 are quashed and set aside and Miscellaneous Civil Appeals are restored to the file of the learned District Judge;
- b. Parties agree to appear before the learned District Judge on 06.08.2015 and for that purpose, no fresh notice be issued to them;
- c. The learned District Judge is requested to decide the Appeals as expeditiously as possible, and in any case, within 3 months from the date of appearance of the parties;
- d. All the contentions of the parties are kept open;
- e. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)