

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

**WRIT PETITION (STAMP) NO.23507 OF 2015**

**Smt. Gangubai Huvappa Shelke**

**.. Petitioner**

**Versus**

**Shri. Mohan Bhupal Suryavanshi and others**

**.. Respondents**

**Mr. Mandar Limaye, for the Petitioner.**

**CORAM : R.M. SAVANT, J.**

**DATE : 19<sup>th</sup> OCTOBER, 2015**

**PC.**

1. The Writ Jurisdiction of this Court is invoked against the order dated 23.07.2015 passed by the Learned Adhoc District Judge-1, Sangli, by which order, the Appeal in question being Misc. Civil Appeal No.137 of 2013 filed by the Petitioner/original Plaintiff came to be dismissed and resultantly, the order dated 16.07.2013 passed on application Exh.5 filed by the Plaintiff for temporary injunction came to be confirmed.

2. The Petitioner herein is the original Plaintiff and who is the owner and in possession of Gat No.504/2 area admeasuring 81 Areas therein situated at village Bedag, Taluka Miraj, District Sangli. The Respondents are the Defendants who are owners and in possession of Gat

No.507 area admeasuring 1 Hectors and 70 Ares in the same village and which is the adjoining land. The dispute between the parties is in respect of the existence of 15 feet wide road between the said two lands i.e. Gat No.504/2 and Gat No.507. It is the case of the Plaintiff that the said road was in use from last 60 – 70 years and since the Defendants are now obstructing the Plaintiff by using muscle power and since the obstruction has the effect of preventing the Plaintiff's truck from carrying the sugarcane from the land as also preventing the Plaintiff from approaching the poultry farm that the suit in question was filed. The Defendants in their Written Statement had denied the existence of the road. It was their case that there was no road in between Gat No.504/2 and Gat No.507 and that the Plaintiff in the guise of seeking the said relief is in fact seeking construction of a new road. In the said suit, the Plaintiff filed an application for temporary injunction numbered as Exh.5. It is pending consideration of the application for temporary application that a Court Commissioner by way of TILR came to be appointed. The TILR after visiting the site in question submitted his report, wherein he showed the existence of a road between the said two lands i.e. Gat No.504/2 of the Plaintiff and Gat No.507 of the Defendants. The Plaintiff in support her case principally relied upon the report of the TILR, whereas the Defendants relied upon the entries made in the consolidation scheme as

well as the 7/12 extracts in respect of the said two lands i.e. Gat No.504/2 and Gat No.507. The Trial Court considered the said application for temporary injunction and rejected the same by its order dated 16.07.2013. The Trial Court observed that the Gat map of Gat No.507 filed along with Exh.33 does not show the existence of any road between Gat No.507 and Gat No.504/2. As also the perusal of the 7/12 extracts of the said Gat No.504/2 and Gat No.507 also does not show the existence of any road. The Trial Court relied upon the revenue extract i.e. 7/12 of Gat No.504/1 and observed that the said extract shows that the Plaintiff has alternate road to approach his land. The Trial Court therefore came to a conclusion that the Plaintiff had not made out prima-facie case and that the balance of convenience was also not in favour of the Plaintiff and that the Plaintiff would not suffer irreparable loss if the injunction is not granted and accordingly rejected the application Exh.5 vide its order dated 16.07.2013.

3. The aggrieved Plaintiff carried the matter in Appeal by filing Misc. Civil Appeal No.137 of 2013. Since as indicated above, much emphasis was led by the Plaintiff on the report of the TILR, the Lower Appellate Court observed that the Defendants had objected to the said report. The Lower Appellate Court also referred to the record of the consolidation scheme i.e. Gat maps as also 7/12 extracts in respect of the

lands in question i.e. Gat No.504/2 and Gat No.507 and since record of the consolidation scheme and the revenue record i.e. 7/12 extracts no road was shown the Lower Appellate Court was of the view that the contention of the Plaintiff could not be accepted. Hence, both the Courts below have concurrently come to a conclusion on the basis of the material on record that there does not exist any road in Gat No.504/2 which belongs to the Plaintiff and Gat No.507 which belongs to the Defendants. Though, ad-interim order was operating pending the consideration of the application for temporary injunction and thereafter during the pendency of the Appeal, in my view, since the Courts below have now decided the said applications, it would not be proper to continue the said ad-interim order especially having regard to the fact that the Courts below have decided the matter on merits. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

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