

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3286 OF 2016

Shri Rajesh Vershi Shah (Jain) and ano. ...PETITIONERS

versus

Shri Malhari Babulal Wani and others ...RESPONDENTS

.....
Mr. Vinod P. Patil, Advocate for petitioners
Mr. Shailesh P. Brahme, Advocate for respondents No. 1 to 4
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 22nd MARCH, 2016.

Order :-

1. Heard learned counsel for the parties.
2. Present petition has been moved by plaintiffs against judgment and order dated 29-02-2016 in miscellaneous civil appeal no. 104 of 2015 passed by ad-hoc District Judge-2, Jalgaon, reversing order dated 18-12-2015 below Exhibit-6 in regular civil suit No. 178 of 2015 passed by civil judge junior division, Chalisgaon whereunder their application for temporary injunction has been rejected.
3. It appears that appellate court had in quite some detail considered the matter and reversed the order of injunction and rejected the application for temporary injunction.
4. Regard may be had to that it is stated that the plaintiffs have access from southern side and on eastern side they are claiming right

by prescription and as such matter does not call for any interference since it does not appear to be of dire necessity.

5. Looking at that the observations as are appearing in the impugned order are *prima facie* in nature, may not be liable to be interfered with in discretionary powers of this court.

6. Under the circumstances, writ petition is not being entertained and same stands rejected.

7. Since the observations as are appearing in the judgment of appellate court are *prima facie* in nature the same shall not influence decision making in the suit on the basis of evidence as may be led by the parties. If, upon evidence, the court comes to the conclusion that plaintiffs have proved their case, it be deemed that defendants are carrying out construction at their own risk and peril and would be subject to outcome of litigation and would make good the rights claimed by plaintiffs.

(SUNIL P. DESHMUKH, J.)

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