

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

WRIT PETITION NO. 10110 OF 2016

Vitthalrao Wamanrao Deshmukh ..PETITIONER

VERSUS

Krishnarao Vinayakrao Deshmukh ..RESPONDENT

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Mr. M.M. Bhokarikar, Advocate for petitioner.

Mr. N.B. Suryawanshi, Advocate for respondent.

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**CORAM : T.V. NALAWADE, J.
DATED : 16th DECEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made by the District Court, Amalner in Miscellaneous Civil Appeal No. 32 of 2014 there by setting aside the order made by the Civil Judge, Junior Division, Chopda on Exhibit 6 filed in Regular Civil Suit No. 66 of 2014. Both sides are heard.

2. The suit is filed for relief of permanent injunction in respect of passage situated between the properties of plaintiff and defendant. The plaintiff wants to prevent the defendant from tethering cattle in this passage as it is creating nuisance to the plaintiff to use that passage. The

defendant is denying the same. The Trial Court has rejected the application and remanded the matter back for giving fresh decision on Exhibit 6 as the District Court felt that order is not reasoned and relevant material which can be verified to ascertain as to whether there is prima facie case in favour of the plaintiff and as to whether the balance of convenience lies in favour of the plaintiff is considered.

3. One more surprising observation is made by the Civil Judge, Junior Division for refusing the relief. It is observed that the relief claimed of permanent injunction is similar to the relief of temporary injunction claimed by the plaintiff and so relief can be granted only after complete trial on merits and present of evidence. This shows that the learned Judge had lost sight of the fact that there is difference between the standard of proof for giving relief of temporary nature and the relief which can be given ultimately by way of decree. This Court sees no reason to interfere in the order made by the Trial Court. Petition stands dismissed.

(T.V. NALAWADE, J.)

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