

1. Heard Mr.Vijay Patil, learned counsel for the petitioners and Mr. Drupad Patil, learned counsel for respondents no. 1 and 2 at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 29.9.2015 passed by 6th Jt. Civil Judge, Jr Dn., Pune below Exhibit-5 in Regular Civil Suit No.737 of 2015 as also the Judgment and order dated 2.3.2016 passed by learned District Judge-19, Pune in Misc. Civil Appeal No.315 of 2015. By these Orders, the Courts below dismissed the application-Exhibit-5 made by the petitioners, hereinafter referred to as 'plaintiffs', for injunction restraining the defendants no. 1 and 2 from constructing cement concrete road in 38 Ares, out of Gat No.1189, in all admeasuring 48 Ares, as more particularly

described in paragraph 1 of the plaint (for short, 'suit road').

3. Plaintiffs have instituted suit, inter alia, for declaration that defendants no.1 and 2 have no right to construct cement concrete road in the suit property; for perpetual injunction restraining the defendants no.1 and 2 from constructing cement concrete road in the suit property.

4. During the pendency of the suit, the plaintiffs took out application-Exh.5 for temporary injunction. Defendant no.2 filed reply dated 18.6.2015 resisting the application. The Courts below rejected the application. It is against these orders, the plaintiffs have instituted the present petition.

5. In support of this petition, Mr. Vijay Patil submitted that in paragraph 6 of the reply of defendant no.2, it is contended that the suit road does not belong to either Village Panchayat, Municipal Corporation or Government. It also does not belong to defendants no.1 and 2. Defendants no.1 and 2 have denied that they are trying to claim ownership. In other words, defendant no.2 contended that the suit road does not belong to either Gram Panchayat, Panchayat Samiti, Zilla Parishad. He submitted that in paragraph 7, defendant no.2 contended that the lands adjoining the suit road, are developed by various developers and suit road is shown as approach road to the adjoining lands while sanctioning the lay out/building Plans of adjoining lands and residents in buildings of the adjoining lands are using the suit

road since long. In paragraph 8, defendant no.2 asserted that the plaintiffs are not entitled to claim ownership over the suit road as claimed. In paragraph 10, defendant no.2 contended that the suit road was already constructed in Asphalt under the various Government schemes.

6. Mr. Vijay Patil submitted that merely because the plaintiffs have allowed the public at large to use the suit road, that does not mean that defendants no.1 and 2 are entitled to construct cement concrete road. On one hand, the learned trial Judge has observed in paragraph 9 that the suit road is not of ownership and in possession of Gram Panchayat, Panchayat Samiti or Zilla Parishad and on the other, in paragraphs 11 and 12, the learned trial Judge, prima facie, held that suit road belongs to the Government.

7. As far as the Appellate Court is concerned, he submitted that the Appellate Court wrongly held that the documents produced by the plaintiffs do not show their ownership over the suit road. He has taken me through the documents tendered during the course of hearing and submitted that the impugned orders deserve to be set aside.

8. On the other hand, Mr. Drupad Patil supported the impugned orders. He submitted that both the Courts below have prima facie held that defendants no.1 and 2 have already constructed cement concrete road as also prima facie the

plaintiffs have not established their ownership over the suit road. He, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned orders prima facie shows that defendants no.1 and 2 have already constructed the cement concrete road. Prima facie, the courts below held that the plaintiffs are not the owners of the suit road. Apart from that, defendants no.1 and 2 have given undertaking that they will not claim any TDR/ownership over the suit road, which undertaking is accepted by the trial Court. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)