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

WRIT PETITION NO. 5537 OF 2015

Shri Subhash Bhiva Hajare & Anr. ...Petitioners/Orig.Defdts

Vs.

Shri Abhiman Dadarao Tikte ...Respondent/Orig.Plfff.

Mr. Sharad T. Bhosale, Advocate for the Petitioners

Mr. Shriram S. Chaudhari for the Respondent

CORAM : M.S. KARNIK, J.

DATED : 2nd APRIL, 2016

P.C. :

1. Heard the learned Counsel for the respective parties.
The Petitioners are the original Defendants seek to challenge the order dated 23rd April, 2015 passed by the District Judge, Barshi in Misc. Civil Appeal No. 96 of 2014 below Exhibit-22.
2. Briefly stated the facts are that the suit property is situated on Western side road of land of the Respondent original Plaintiff as described in para 1 of the plaint. Respondent claims to be using the suit road to approach his land since long. However, the Petitioners are raising construction and have laid obstacles in the user of the road. Therefore, Respondent filed suit for perpetual injunction. An application Exhibit-5 was filed by the Respondent before the

learned trial Judge. The trial Court after considering the application of the Respondent and the written statement and say filed by the Petitioners was pleased to allow the application Exhibit-5 for injunction.

3. The Petitioners being aggrieved by the order passed below Exhibit-5 by the trial Court filed Misc. Civil Appeal No.96 of 2014 in the Court of the District Judge, Barshi. The learned Appellate Court by an order dated 23rd April, 2015 passed order below Exhibit-22 was pleased to dismiss the Appeal with costs. This order of the Appellate Court is under challenge.
4. Heard the learned Counsel for the Petitioners and the Respondent. Learned Counsel for the Petitioners vehemently contends that the Courts below have not appreciated the village map and has erred in appreciating the documentary evidence on record. He further contends that there is an alternate way which can be conveniently used by the Respondent.
5. The learned Counsel for the Respondent on the other hand contended that in order to establish a prima facie case have relied upon the documents inclusive of village map and copies of the notice issued by Public Work Department to the Petitioners. There is no dispute that the Respondent is owner

and in possession of land block No.105 to the extent of 1 H 13R middle portion. According to him the documentary evidence on record was quite sufficient to establish the existence of way on the Western side of the land of the Respondent as described in the map. The said map is issued by the Office of Taluka Inspector of Land Records. Reliance is placed on certain photographs and affidavits of Vithal Tikte and Rajendrakumar Shah co-owners of the land block Nos. 105 and 106.

6. The Counsel for the Respondent further pointed out that on the application of the Petitioners the Court Commissioner was appointed to inspect the site and to submit his report and the said report is at Exh-39. In his detailed report, the Court Commissioner has observed that the construction was raised up to the plinth level towards Western side of the land of the Respondent/Plaintiff clearly indicating that they have raised construction on the road itself and due to the construction the user of the way by the Plaintiff is obstructed.
7. I have gone through the judgment and order passed by the Courts below. The learned Appellate Court has upon consideration of the material on record in the form of maps, photographs and affidavits of co-owners of land block No.105 and 106 arrived at a prima facie finding as regards existence of Road on the Western side land of the Respondent. The

Appellate Court has also taken into consideration the report of the Court Commissioner Exhibit-39 which clearly indicates that constructions have been put upon the road itself as a result of which the user of way by the Respondent has been materially obstructed. Both the Courts below have concurrently found in favour of the Respondent while allowing the application for injunction. In the light of the concurrent finding of the facts by the Courts below I find no reason to interfere with the well reasoned order passed by the Appellate Court. The Writ Petition is accordingly dismissed with no order as to costs.

8. According to the petitioner the land in question over which the way is claimed belongs to the Public Works Department and the Public Works Department is not made a party to the Suit. These are the contentions which the Petitioners are free to raise before the trial Court, which objections raised can be decided on its own merits in accordance with law.

(M.S. KARNIK, J.)