

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6396 OF 2015

KISAN LAXMAN KATKAR
AND ORS.

...Petitioners

Versus

KALPANA BALASAHEB KADAM
AND ANR.

...Respondents

....

Mr. Anilkumar Patil, Advocate for the Petitioners.

Mr. Surel S. Shah, Advocate for Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 04th MARCH, 2016

P.C.

1. Heard Mr. Anilkumar Patil, learned Counsel for the petitioners and Mr. Surel Shah, learned Counsel for respondents, at length.

2. By this Petition, under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 17.6.2014 passed by learned 3rd Joint Civil Judge, Junior Division, Malshiras below Exhibit-5 in Regular Civil Suit No.1431/2013 as also the judgment and order dated 7.4.2015

passed by learned District Judge-I, Malshiras in Misc. Civil Appeal No.21/2014. By these orders, the Courts below allowed the application Exhibit-5 made by the respondents, hereinafter referred to as the 'plaintiffs' and issued injunction restraining the defendants prohibiting the plaintiffs from using south-north road which is on the western bandh of plaintiffs property for approaching Malshiras-Akluj tar road.

3. Mr. Patil submitted that the plaintiffs have alternate road, namely, Bagewadi-Girzani road for approaching Malshiras-Akluj road. He submitted that as the plaintiffs have an alternate road, the Courts below were not justified in allowing the application.

4. On the other hand, Mr. Shah supported the impugned orders. He submitted that the plaintiffs are using the cart way which runs north-south. They have purchased the lands from the brothers of petitioner Nos.2 & 3 along with right of way on the western bandh. In fact, there is a specific recital to that effect in the sale deed.

5. I have considered the rival submissions advanced by

learned Counsel appearing for the parties. I have also perused the material on record.

6. The Courts below after considering the material on record have concurrently found that the plaintiffs are having right of way, as claimed by them, for approaching Malshiras-Akluj road. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)