

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12217 OF 2015

Premchand Ratanlal Jain and others ... Petitioners
Vs.
Gyanchand Vikaskumar Jain and others ... Respondents

WITH

WRIT PETITION NO.12218 OF 2015

Premchand Ratanlal Jain and others ... Petitioners
Vs.
Vikaskumar Gyanchand Jain and others ... Respondents

Mr. Unmesh G. Dindore for Petitioners.

Mr. R. B. Raghuvanshi i/b. Ms Rutuja Ambekar for Respondents No.2 and 3 in Writ Petition No.12217 of 2015 and for Respondents No.1 and 2 in Writ Petition No.12218 of 2015.

Mr. Ratnesh Dube for Respondent No.1 in Writ Petition No.12217 of 2015 and for Respondent No.3 in Writ Petition No.12218 of 2015.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 12, 2016

ORDER :

Heard Mr. Dindore, learned Counsel for petitioners and Mr. Raghuvanshi, learned Counsel for respondents No.2 and 3 in Writ Petition No.12217 of 2015 and for respondents No.1 and 2 in Writ Petition No.12218 of 2015 as also Mr. Dube for Respondent No.1 in Writ Petition No.12217 of 2015 and for Respondent No.3 in Writ Petition No.12218 of 2015. in both the Petitions at length.

2. Writ Petition No.12217 of 2015 is preferred by the petitioners, hereinafter referred to as plaintiffs, challenging the judgment and order dated 06.11.2015 passed by the learned District Judge-16, Pune in

Miscellaneous Civil Appeal No.245 of 2014. By that order, the learned District Judge allowed the Appeal preferred by the respondents herein and quashed and set aside the judgment and order dated 03.05.2014 passed by the learned Civil Judge, Junior Division, Vadgaon Maval, Pune below exhibit-5 in Regular Civil Suit No.50 of 2014 and expedited the hearing of the Suit. By order dated 03.05.2014, the learned trial Judge allowed the application exhibit-5 made by the plaintiffs and issued injunction restraining the respondents, hereinafter referred to as defendants, their servants, agents, contractors and all other persons acting or purporting to act on their behalf from obstructing the plaintiffs from using the common road to and fro as described in paragraph 1 of the plaint.

3. Writ Petition No.12218 of 2015 is instituted by the petitioners, hereinafter referred to as plaintiffs, challenging the judgment and order dated 06.11.2015 passed by the learned District Judge-16, Pune in Miscellaneous Civil Appeal No.241 of 2014. By that order, the learned District Judge allowed the Appeal preferred by the defendants and quashed and set aside the judgment and order dated 03.05.2014 passed by the learned Civil Judge, Junior Division, Vadgaon Maval, Pune below exhibit-5 in Regular Civil Suit No.50 of 2014. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

4. During the course of hearing, Mr. Raghuvanshi submitted that without prejudice to the rights and contentions of the respondents, the impugned orders passed by the learned District Judge in Miscellaneous Civil Appeals may be set aside and the Appeals may be dismissed. He further submitted that since the controversy in the Suit is about right of

way, the learned trial Judge may be directed to dispose of the Suit in a time bound manner.

5. In view thereof, by consent of the parties, Petitions are disposed of in the following terms:

- a. The impugned judgment and orders dated 06.11.2015 passed by the learned District Judge-16, Pune in Miscellaneous Civil Appeal No.245 of 2014 and Miscellaneous Civil Appeal No.241 of 2014 are quashed and set aside and these Appeals are dismissed;
- b. The orders dated 03.05.2014 passed by the learned trial Judge below exhibit-5 stands revived;
- c. Parties agree that they will appear before the learned trial Judge on 22.02.2016 and for that purpose, no fresh notice be issued to them;
- d. The learned trial Judge is requested to decide the Suit as expeditiously as possible and preferably on or before 30.06.2016;
- e. It is made clear that this order is passed without prejudice to the rights and contentions of the respondents and the trial Court will decide the Suit on the basis of evidence on record and in accordance with law and uninfluenced by the observations made herein;
- f. All contentions of the parties on merits are expressly kept open;
- g. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)