

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

WRIT PETITION NO. 12304 OF 2016

Shri Simon Nadar Deva Shyam
Nadar

..Petitioner.

Vs

Shri Prabhakar Gajanan
Chaudhary and Ors.

.. Respondents

Mr. Amol P. Mhatre, Advocate for Petitioner.
Mr. Suhas M.Oak, Advocate for respondent no.8.

CORAM : R.G.KETKAR,J.
DATE : 14/02/2017

PC:

1. Not on Board. At the request of Mr. Mhatre, taken up for admission. Heard Mr. Amol Mhatre, learned counsel for the petitioner and Mr. Suhas Oak, learned counsel for respondent no.8 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as plaintiff, has challenged the Judgment and order dated 5.3.2014 passed by the learned 4th Jt. Civil Judge, Jr. Dn., Bhiwandi below Exhibit-5 as also the Judgment and order dated 5.2.2016 passed by the learned District Judge-10, Thane in Misc. Civil Appeal No.52 of 2014. By these orders, the Courts below dismissed the application taken out by the plaintiff for injunction restraining defendants no. 1 to 8 from obstructing the plaintiffs' right of way from his land, i.e. Dominant Heritage over the 20' wide road in

the Servient Heritage,i.e. Survey no.49, Hissa no. 54(P), Kamatghar, Bhivandi, District-Thane, upto public govan road and back from public govan road to his land the Dominant Heritage.

3. Mr. Mhatre submitted that originally Survey No. 49, Hissa No. 54 admeasuring 10 Gunthas was owned by Gajanan Chaudhari. He executed sale deed dated 25.4.1986 in favour of Raghunath Pathare and Vasant Pathare. Pathare brothers purchased 10 Gunthas of Survey No.49, Hissa No. 54. In that sale deed, reference is made to a road for approaching Survey No. 49, Hissa No. 54. He also invited my attention to sale deed dated 26.3.1993 executed by Pathare brothers in favour of the plaintiff herein and in particular recitals after description of boundaries in the sale deed as also consent deed dated 30.9.1996. He submitted that whatever was conveyed by Chaudhari to Pathare brothers is conveyed by Pathare brothers to the plaintiff herein. The Courts below committed error in holding that though the road is mentioned in the sale deed dated 25.4.1986, same does not find place in the subsequent sale deed of 26.3.1993 and the consent deed dated 30.9.1996. He,therefore, submitted that the petition requires consideration.

4. On the other hand, Mr.Oak supported the impugned orders. He submitted that in paragraph 20, the learned District Judge has considered N.A. Order dated 26.2.2003 as also construction permission dated 14.6.2012 mentioning about 30 meters wide

road. On behalf of defendants no.1 to 7 and 8, statement was made that alleged 20' road is included in 30 meters road. The learned District Judge, therefore, held that balance of convenience lies in favour of the defendant.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. While rejecting the application for injunction, in paragraph 9, the learned trial Judge has referred to sale deeds dated 25.4.1986, 26.3.1993 and consent deed dated 30.9.1996. After considering these documents, the learned trial Judge observed that in the sale deed dated 25.4.1986, existence of 20' road situate on the eastern side of 10 Gunthas land purchased by Pathare brothers is mentioned. However, the existence of 20' wide road on the eastern side of 10 R purchased by the plaintiff is not shown in the sale deed dated 26.3.1993 and consent deed 30.9.1996. As far as the appellate court is concerned, in paragraph 17 the learned District Judge observed that neither in the sale deed dated 26.3 1993 nor in the consent deed dated 30.9.1996 there is any whisper about eastern 20' road granted by Pathare brothers to the plaintiff. Thus, the Courts below after considering the documents, have prima facie, held that 20' wide road on the eastern side of 10 R purchased by the plaintiff is not referred in the sale deed dated 26.3.1993 and consent deed dated 30.9.1996. In view thereof, no case is made

out for interference with the impugned order. Petition fails and the same is dismissed. The learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R.G.KETKAR, J.)