

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

WRIT PETITION NO.9506 OF 2015

Dr. Shantiprasad Aadappa Tippannavar & Anr.	...Petitioners
vs.	
Shri Narayan Shankar Honwadkar & Ors.	...Respondents

Mr.Ashutosh M. Kulkarni for the Petitioners.
Mr. P. M. Arjunwadkar for Respondent Nos.2 and 3.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 29th November, 2017

P.C.:

. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The Petitioner herein happens to be the original Plaintiff. The Plaintiff has filed a suit seeking perpetual injunction. The suit was filed initially against Defendant No.1. However, it appears that Defendant No.1 had sold a portion of the suit property in favour of Defendant Nos.2 and 3. They were impleaded as parties to the suit and they had filed their written statement. The defendant Nos.2 and 3 had filed written statement contending therein that the whole suit property is owned by Defendant No.1. There is a gate on the northern side of the suit property. That the owner has sold part of the suit property to his father-in-law. Predecessors of the Plaintiff have used the said gate which was a permissive way. It was specifically contended that some portion of the gate falls in CTS No.611 and that the Plaintiff has no right to the said portion. It was specifically contended by Defendant Nos.2 and 3 that taking into consideration the profession of the Plaintiff they had never obstructed the way of the Plaintiff or his patients and that was also permissive possession. They had objected

to the ownership of the Plaintiff into some portion of the suit property. In view of the admission in the written statement that Defendant Nos.2 and 3 had not obstructed the way of the Plaintiff, the Plaintiff had filed an application below Order 12 Rule 6 seeking judgment on admission. The said application was rejected by order dated 1/7/2015. Hence this writ Petition.

3. The learned Court had specifically observed that it was not the case of the Plaintiff that Defendant Nos.2 and 3 had at any point of time obstructed the way. The suit was principally filed against Defendant No.1. It was also observed that in the written statement of Defendant Nos.2 and 3 it was specifically contended by them that they have objected and denied 1/3rd portion of CS No. 611 i.e. area of 4080 sq. ft. They have denied the sale Deed executed in favour of the Plaintiff. It is in these circumstances that it would not have been possible for the Court to pass an order under Order 12 Rule 6 which pertains to judgment on admission.

4. In the present case, in view of the contentions raised in the plaint issue to be determined would be "Whether the Plaintiff had no title to the portion of CS 611 admeasuring 4080 sq.ft.". The order passed by Civil Judge, Junior Division dated 1/7/2015 calls for no interference.

5. It is made clear that this Court has only considered the application of the Plaintiff below Order 12 Rule 6 and therefore the Court shall not be influenced by the observations made herein and shall decide the suit on its own merits. Rule is made absolute. Petition stands disposed of.

(SADHANA S. JADHAV, J.)