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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 73 OF 2017
WITH
CIVIL APPLICATION NO. 101 OF 2017**

Rabinder Dhyam Nigam & Anr	...Appellants
<i>Versus</i>	
Sabari Developers LLP & Ors	...Respondent

**AND
APPEAL FROM ORDER NO. 200 OF 2017
WITH
CIVIL APPLICATION NO. 274 OF 2017**

Prakash Anant Joshi	...Appellant
<i>Versus</i>	
Sabari Developers LLP & Ors	...Respondent

Mr Chirag Mody, with Nilesh Tated & Rushabh Parekh, i/b DSK
Legal, for the Appellants in both the matters.
Mr Prasad Dani, Senior Advocate, with Chaitanya Chavan, Ruchit
Dave & Yohaan Rubens, i/b Vigil Juris, for Respondents Nos. 1 to
3.

**CORAM: G.S. PATEL, J
DATED: 19th June 2017**

PC:-

1. Heard.

2. The Appellants in Appeal from Order No. 73 of 2017 are the original Plaintiffs. They are aggrieved by an order dated 15th October 2016 dismissing their Notice of Motion.

3. The Plaintiffs' property is CTS No.111. Mr Mody states that the Defendants acquired title by a registered conveyance to an adjacent property being CTS No. 110. This is admittedly a landlocked property. It has no access from either a municipal or a public road except over the Plaintiffs' property CTS No. 111. That the Plaintiffs have claimed title by adverse possession to CTS No. 110 in any other proceedings is another matter altogether.

4. At the interim stage, the Plaintiffs sought to restrain the Defendants from accessing their plot of land, CTS No. 110, by saying that their passage over the Plaintiffs' CTS No. 111 constituted an act of trespass.

5. In the impugned order, the learned Judge found as a matter of fact on the documents before him and in particular in paragraph 15 that the Defendants could not enjoy or use their plot CTS No. 110 without passing over CTS No. 111. There is a specific finding that it is not the case of any of the parties that the Defendants' plot CTS No. 111 has any other alternative access road.

6. The learned Judge carefully looked at the photographs that were produced by the Defendants. He also saw a video compact disc

produced by the Defendants. He also considered the filings up to sur-sur-sur-rejoinder. From all of this, the learned Judge gleaned that CTS No. 110, which the Defendants have bought, has a compound wall and cabin. He saw evidence of a truck and other material on the video. He concluded that it was impossible for the Defendants to access their plot without crossing a portion of the Plaintiffs' CTS No. 111. He also noted in paragraph 16 of his order that the Defendants' plot had a compound wall and a gate and that the land in front of the gate appearing to be a tarred road. He concluded that this suggested that the tarred road was used by the Defendants and their predecessors to enjoy their plot CTS No. 110. The history of the Defendants' plot goes back more than 50 years to 1968 or even before. Thus, *prima facie* the learned Judge found for the Defendants.

7. I see no infirmity in the order passed by the learned Judge. There is nothing demonstrated to indicate that the factual findings are wrong. Indeed, it is accepted that the Defendants' CTS No.110 is landlocked. The Plaintiffs say that this is irrelevant, and will not entitle the Defendants to even a right of passage and access through or access the Plaintiffs CTS No.111 in order to enable the Defendants to reach their own plot. This is an untenable submission; and, certainly at the *prima facie* stage, it does not commend itself. No fault can be found with the impugned order.

8. The Appeal is dismissed. The Civil Application is infructuous and is disposed of as such.

9. It is clarified that the Suit will of course be decided on its own merits after parties have completed pleadings and led their evidence uninfluenced by the observations in the impugned order or in this order. These are all in the nature of *prima facie* observations.

10. The matter is listed in the Trial Court on 27th June 2017. The Trial Court is requested to fix a schedule for completing filings and other pre-trial work.

11. The Plaintiff Appellant in Appeal from Order No. 200 of 2017 claims to be a co-owner of CTS No. 171, a 20 ft. wide internal access road from the Municipal Road to CTS No. 111. He is aggrieved by an order dated 9th December 2016 refusing ad-interim relief restraining the owners of CTS No. 111 from using the access. For the reasons set out above for the companion Appeal, this Appeal is also dismissed. The Civil Application is infructuous and is disposed of as such.

12. The Motion will be heard on merits in due course.

(G. S. PATEL, J)