

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11737 OF 2015

**PRALHAD BALWANT NIKAM AND OTHERS
VERSUS
JIVAN WAMANRAO BUTKULE AND ANOTHER**

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Advocate for the Petitioners : Shri S. A. Patil h/f.
Shri V. D. Salunke

Advocate for Respondent Nos.1 and 2 : Shri S. P. Urgunde

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 12th DECEMBER, 2018.**

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PER COURT :

1. The petitioners, who are the original defendants, are aggrieved by the order dated 20/02/2014 passed by the Trial Court, by which, injunction was clamped against the petitioners in RCS No. 93/2012. They are also aggrieved by the judgment and order of the Appellate Court dated 22/07/2015, by which, their Misc. Civil Appeal No. 28/2014, has been dismissed.

2. I have considered the submissions of the learned Advocates for the respective sides.

3. The suit is at the stage of recording of oral evidence. The issue is as to whether, the road claimed by the plaintiffs has a

width of 8 ft. or 2 ft. ? Another issue is whether, an alternate road is available to the plaintiffs ?

4. The Trial Court concluded that as the court commissioner has been appointed and has submitted a report indicating an old road, which has a width of 2 ft. and has been in use for several years, that the injunction was clamped against these petitioners restraining them from obstructing the plaintiffs to use the suit way. The Appellate Court also concluded that disputed questions cannot be laid to rest at an interlocutory stage. It would require recording of oral evidence and it would have to be assessed as to whether, there is a road or the size of the road and whether, it is in use for several years and whether, an alternate road has been created.

5. Considering the above and since the injunction is operative from February 2014 onwards, I do not find any reason to cause an interference in the impugned order. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-