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

WRIT PETITION NO.8887 OF 2017

Anand Bala Bambardekar

and ors

... Petitioners

V/s.

Ganesh Nareshwar Vegurlekar

and ors

... Respondents

Mr. Nishigandh N. Patil, for the Petitioners.

Mr. Madhav J. Jamdar, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for respondents.

2] By this petition, filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 3.5.2017, passed by District Judge-1, Sindhudurg, thereby dismissing Misc. Civil Appeal No.25 of 2015.

3] The said appeal was preferred by the present petitioners, who are the original defendant Nos 1 to 3 in the trial Court, against the order dated 6.7.2015, passed by Civil Judge Junior Division, Malvan, below Exh.5 in R.C.S. 14 of 2013.

4] The said suit was filed by the respondents for declaration and permanent injunction in respect of approach way which is obstructed by the petitioners.

5] Both the trial Court and the Appellate Court on appreciation of material on record, came to hold that the petitioners have no right to cause such obstruction and accordingly directed the petitioners to remove such obstruction so as to allow respondents to use the said approach way.

6] The submission of learned counsel for the petitioners is that neither the trial Court nor the Appellate Court, have properly considered the Court Commissioner's report which shows that there is alternate road having length of 40 feet and width of 6 feet which respondents can very well use as access road to their property and therefore, it was not proper on the part of trial Court to grant such relief of injunction calling upon the petitioners to remove the obstruction on the approach road.

7] However, the perusal of the impugned judgment of the Appellate Court and order of the trial Court, goes to show that both the Courts have considered the Court Commissioner's report and also the contention raised by the petitioners about alternate way which according to petitioners is available and shown in the Court Commissioner's report. It is found as can be seen from the map

attached to the Court Commissioner's report that the said road is hardly of 2 to 4 feet in width and there are steps on that road and therefore that road cannot be used as access.

8] When both the trial Court and the Appellate Court have arrived at concurrent finding of fact considering the Court Commissioner's report and the contention of the petitioners that alternate way is available, it would not be proper or just or legal, on the part of this Court to interfere in the said finding of fact, that too in writ petition when no perversity is found in the said finding.

9] The writ petition, therefore, being without merit stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]