

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8550 OF 2017

Sambhaji Ramchandra Barbole & ors. ...Petitioners

Versus

Yaswant Gautam Barbole & anr. ...Respondents

Mr. Amitkumar D. Sale, a/w Mr. Tukaram Shendge, for the
Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 21st JUNE, 2019

PC:-

- 1.** Heard Mr. Sale, the learned Counsel for the Petitioners.
- 2.** The challenge in this petition is to an order passed by the learned District Judge, Solapur, on 5th November, 2016, in Miscellaneous Civil Appeal No.162 of 2015, whereby the appeal preferred by the Respondents – original plaintiffs against an order of rejection of prayer for temporary injunction, dated 30th October, 2015, passed by the learned Civil Judge, Junior Division, Madha, came to be allowed and the Petitioners – original defendants were restrained from causing obstruction to the enjoyment of the suit way by the plaintiffs – respondents.

3. The learned District Judge further directed the Trial Court to decide the suit, bearing Regular Civil Suit No.437 of 2015 by the end of April – 2017.

4. The learned Counsel for the Petitioners urged that the Appellate Court could not have interfered with the order passed by the learned Civil Judge, whereby the discretionary equitable relief was justifiably refused by the learned Civil Judge and, therefore, this Court may exercise the jurisdiction under Article 227 of the Constitution of India.

5. From the perusal of the material on record and the impugned order, it becomes evident that the existence of the suit way is not in dispute. What is sought to be put in contest is the proprietary right over the suit way i.e. whether the plaintiffs have a right of access over the suit way. In this view of the matter, it may not be justifiable to exercise the extraordinary jurisdiction under Article 227 of the Constitution of India.

6. Even otherwise, the learned District Judge, had directed the trial Court to decide the suit bearing RCS No.437 of 2015 by the end of April – 2017. Upon instructions, the learned Counsel for the Petitioners submits that the suit yet

awaits final adjudication. In the circumstances, it may be expedient to direct the learned Civil Judge, Madha, to make an endeavour to hear and decide the Regular Civil Suit No.437 of 2015, in accordance with law, expeditiously and in any event by the end of December, 2019.

7. With the aforesaid observations and directions, the petition stands dismissed.

[N. J. JAMADAR, J.]