

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

WRIT PETITION NO.791 OF 2017

Balasaheb Shivram Khadke ... Petitioner
Vs.
Anjanbai Kisan Kokate & Ors. ... Respondents

Mr. Shriram S. Kulkarni for the Petitioner.

CORAM : M. S. KARNIK, J.

DATE : 17th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. Shri Kulkarni invited my attention to the plaint. The petitioner is the original plaintiff. The suit is filed by the plaintiff for declaration and injunction in respect of the village road which according to the petitioner is passing between Gat No.64 and 65 more specifically indicated in the village map at Page 34 of the paper book. It is his contention that the village map clearly indicates the existence of the road which the petitioner claims to be in existence. It is his case that the defendants obstructed the plaintiff from using the said road and have restrained the plaintiff from using the said road which is in existence more than 100 years. The Trial Court by order dated

29.5.2014 directed the parties to maintain status quo at the time of hearing of the application Exhibit 5. The Trial Court by the order dated 17.2.2016 rejected the application Exhibit 5 for temporary injunction. The Trial Court relying upon the various photographs observed that the said photographs does not reveal where the road is situated. The Trial Court further said that the village map filed by plaintiff shows that the road passes from land Gat No.65 and not from between Gat No.64 and 65 as claimed by plaintiff.

3. The Appellate Court concurred with the order passed by the Trial Court and by the order dated 28.9.2016 dismissed the Appeal. Having regard to the concurrent findings recorded by the Courts below, I am not inclined to interfere with the discretion exercised by the Appellate Court which is based on the materials on record. Undoubtedly these are prima facie observations of the Courts below and the suit will obviously be decided by the Trial Court on merits based on the evidence on record.

4. The present Petition is therefore rejected with no order as to cost. However, considering the controversy and as the suit is

of the year 2014, the Trial Court is requested to decide the suit finally as expeditiously as possible and preferably within a period of one year from today.

(M. S. KARNIK, J.)