

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 6501 OF 2019**

Sharique Khan s/o Jafar Khan

vs.

Gajanan Pundlik Ambade

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Office Notes, Office Memorandum of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri. A. M. Tirukh, counsel for petitioner.  
Shri. M. Y. Wadodkar, counsel for respondent.  
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**CORAM : MANISH PITALE J.**

**DATED : 22/01/2020**

By this writ petition, the petitioner (original defendant) has challenged concurrent orders passed by the two Courts below, whereby temporary injunction has been granted in favour of the respondent (original plaintiff).

2. The respondent has filed suit for permanent injunction against the petitioner herein. The dispute concerns a plot bearing No. 3896. The southern side is owned by the respondent while the northern side is owned by the petitioner herein.

3. According to the respondent, he was constrained to file the suit, because the petitioner had initiated construction on the northern part of the plot belonging to him, which would obstruct use of approach road of 5 feet abutting portion of the plot owned by the respondent on the southern side. It was claimed by the respondent that the 5 feet road was part of his property and that the petitioner was

required to be enjoined from making any construction therein. It was claimed that the said 5 feet road is the only approach way to his plot and house and that therefore, such an injunction was necessary.

4. Along with the suit, the respondent filed application for temporary injunction seeking a direction against the petitioner to be restrained from making construction to obstruct the said 5 feet road. The parties relied upon documents before the Court below to support their respective stands.

5. The Courts below have found that even if the sale deed, whereby respondent has purchased the portion of the southern plot No.3896, did not specifically mention existence of the 5 feet approach road, in sale deed of an earlier vendor of the year 1996 there was mention of the same. In fact, this is one of the factors taken into consideration by the Courts below to hold in favour of the respondent to direct that the petitioner would not undertake construction on the said 5 feet road portion abutting the plot and house of the respondent.

6. The learned counsel appearing for the petitioner submits that both the Courts below had committed an error in granting the order of temporary injunction in favour of the respondent as two sale deeds executed prior to the sale deed executed in favour of the respondent never mentioned existence of the said 5 feet road and it was only in a sale deed executed much earlier in the year 1996 that such fact was

mentioned. It was submitted that the Courts below had committed an error in relying upon the said document when the document/sale deed on the basis of which the respondent claimed title did not mention existence of the said 5 feet road and the boundaries of the portion of the plot belonging to the respondent were specifically stated in the sale deed.

7. Considering the fact that the Courts below have concurrently appreciated the material presently available on record and they have found in favour of the respondent, this Court in writ jurisdiction is not inclined to interfere in the findings of the two Courts below. In any case, the findings so rendered are only prima facie in nature and the claim of the respondent would be ascertained when the suit is finally decided. Taking into consideration the fact that the construction of residential house of the petitioner is held up because of the nature of temporary injunction granted by the Courts below, it would be in the interest of justice the suit itself is finally decided.

8. In view of above, the writ petition is dismissed, but at the same time the Court below is directed to decide the suit as expeditiously as possible and in any case within a period of **six months** from today.

**JUDGE**