

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4231 OF 2021

Anjana Namdeo Pawar Petitioner

Vs.

Rajendra Hiranman Hawaldar & Respondents
Ors.

Mr. Rupesh A. Zade for Petitioner
Mr. Dormaan Dalal for Respondent Nos. 1 and 2.

Coram : NITIN W. SAMBRE, J.
Date : 17TH AUGUST, 2021

P.C.:

1. This Petition is by the Plaintiff questioning an order of refusal of grant of temporary injunction.
2. The Petitioner initiated a suit claiming that the suit property i.e. admeasuring 7 feet x 40 feet is a common place and Defendant have encroached upon the same. Since the Petitioner has failed to demonstrate prima facie case, the trial Court rejected a prayer for grant of temporary injunction, which was confirmed in an appeal. As such, this petition.

3. Subsequent to the purchase of property, the Defendants have acknowledged the disputed lane as a common space which the Courts below have failed to consider.

4. The further contentions are the common declaration in the newspaper was made about the suit property being the property meant for common use, which according to him, is not considered in its true perspective by both the Courts below.

5. The Respondent supports the order impugned.

6. Apart from the concurrent findings recorded by the Courts below, it has to be noticed that the Petitioner has failed to bring on record the sketch map with the plaint demonstrating area and location of encroachment, which is mandatory under law. As such, prima-facie the contention of the Petitioner about alleged encroachment on common space cannot be appreciated.

7. Apart from above, even if the consent letter is not disputed to have been executed but what is disputed is the circumstances and under which the same was executed.

8. Apart from above, the issue about declaration in the newspaper at this stage cannot be considered to the detriment of the Defendants/Respondents for granting temporary injunction.

9. No case for interference in extra ordinary jurisdiction of this Court is made out. The Petition as such fails, stands dismissed.

(NITIN W. SAMBRE, J.)