

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.823 OF 2021

**BABURAO LAXMAN WAGH
VERSUS
GAVAJI DAMU WAGH AND ANOTHER**

...
Advocate for Petitioner : Mr. Umakant U. Wagh
Advocate for Respondents No.1 & 2 : Mr. Kalyan V. Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th JULY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 10/06/2020 passed by learned Civil Judge Junior Division, Shevgaon below Exhibit-5 in Regular Civil Suit No.313/2019 and confirmed by the appellate Court in Misc. Civil Appeal No.33/2020.

2. The plaintiff/petitioner filed suit for injunction that defendants should not obstruct user of the customary road from Northern boundary of Gut No.502/2. Alongwith suit, application Exhibit-5 is filed. Respondents/defendants resisted the application by filing written statement and say. Trial Court rejected application Exhibit-5 on the ground that plaintiff himself admitted that there is alternate way to approach his land. His claim is that the way which is claimed in the suit is more convenient to approach his land and the other way is a longer way. The trial Court has held that the

plaintiff has not produced sufficient material on record to show the existence of suit way. Said finding is confirmed by the appellate Court holding that except bare words of plaintiff nothing substantial is placed on record to confirm that similar suit way exists since year 2005 and thereafter till date.

3. Having heard the learned advocate for petitioner and the learned advocate for respondents and after perusing the record, it is clear that earlier suit bearing No.122/2005 which was filed by the petitioner for same relief, is voluntarily withdrawn. At the time of withdrawal of the said suit the petitioner has sought permission of the trial Court to file suit subsequently for the same relief. The said permission was refused by the trial Court.

4. Perusal of the pleadings of the parties and the documents on record reveals that the petitioner/plaintiff has himself admitted that there is an alternate way, but it is longer way than one which he is claiming in the suit. If it is so, whether he is entitled to the suit way shall be decided by the trial Court after the parties lead their respective evidence. In view of availability of alternate way, may be a longer way, at this stage, the trial Court as well as appellate Court were right in recording a finding that petitioner has failed to prove *prima facie* case and no balance of convenience exists in favour of the petitioner. The petitioner is not

likely to suffer irreparable loss if the injunction is refused.

5. Concurrent findings of fact recorded by the Courts below are not liable to be interfered with in exercise of extraordinary writ jurisdiction. Both the Courts have passed reasoned orders which are supported by the record. No case is made out by the petitioner to warrant interference in exercise of extraordinary writ jurisdiction. Writ petition is, therefore, dismissed. In the facts of the case, trial of the suit is expedited.

(NITIN B. SURYAWANSHI, J.)