

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

23 WRIT PETITION NO.9309 OF 2022

SADHU BHIWA TIDKE AND ANOTHER
VERSUS
KERBA RAGHUNATH TIDKE AND OTHERS

Shri. M. L. Dharashive, Advocate for the petitioners

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th SEPTEMBER, 2022**

PER COURT :-

1. Heard.
2. Petitioner is the original plaintiff in R.C.S. No. 474 of 2019 pending before the Joint Civil Judge Junior Division, Ausa.
3. Facts in brief are that the petitioners, the original defendants and the respondents, the original plaintiffs are adjoining land holders. Plaintiffs are holders of lands bearing block No. 111, 112, 114, 115 and 116. Defendants are holders of land bearing block No. 107, 95 and 102. There is an approach way in South-North direction to the plaintiffs from the boundary of land bearing old Survey No. 30 i.e. boundary in between the lands bearing Gat Nos. 98, 103, 102 and 95, 96, 106 and 107.

This approach way is used by the plaintiffs and their predecessors for accessing to their fields. The defendants are obstructing the enjoyment of the road and therefore plaintiffs filed this suit for perpetual injunction. They also filed application for temporary injunction.

4. The defendants filed written statement at Exhibit 32 in the record of the Trial Court. They denied all the allegations except the existence of their lands adjoining to the lands of the plaintiffs, formation of gat numbers from old survey numbers.

5. The learned Trial Court held that there is way in existence and the road was obstructed by the defendants. Therefore, the learned Trial Court allowed the application Exhibit 5 and granted temporary injunction. Appeal preferred by the defendants came to be dismissed.

6. On perusal of the judgment of the Trial Court and First Appellate Court, I do not find that there any infirmity in the decision recorded by both the Courts. Both the Courts have held that the road is in existence. Learned counsel Shri. Dharashive

for the petitioners submits that there is an alternate road. The plaintiffs can use that road. However, both the Courts have held that there is no *prima facie* evidence of existence of alternate road. In this view of the matter, I do not find any justification to interfere in the order of the Trial Court and the First Appellate Court. Hence the petition is devoid of any substance. It is dismissed. No costs.

[M. G. SEWLIKAR, J.]

ssp