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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1787 OF 2022**

Tajuddin Latif Mulani and Anr.Petitioners
V/s
Dnyandeo Vithoba Ogale and Ors.Respondents

Mr. Abhijit P. Kulkarni for the Petitioners.
Mr. Dilip Bodake a/w Mr. Sharad for the Respondent

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2022

P.C.:-

1] This Petition is by original Defendant Nos. 4 and 5 to Regular Civil Suit No.160 of 2020 which is initiated by Respondent Nos.1 and 2 for permanent injunction, restraining the Defendants from obstructing possession, taking out any proceedings for removal of encroachment, not to claim right of way, not to create new way in relation to suit property.

2] In the said proceedings Respondent Nos. 1 and 2 have moved an application-Exhibit-5, seeking temporary injunction which was allowed by the learned Civil Judge, Junior Division, Indapur vide impugned order dated 08/09/2020 which was confirmed in Civil Appeal No.43

of 2020 vide order dated 16/03/2021. As such, this Petition.

3] Contentions of Mr. Kulkarni, learned Counsel for the Petitioners are, against the Plaintiffs, Defendant Nos. 1 to 3 have already initiated proceedings for removal of illegal structure and encroachment as the notice under Section 53 of the Village Panchayat Act is already issued. According to him, as a consequence of grant of temporary injunction, apart from Defendant Nos. 4 and 5 i.e. Petitioners herein, other villagers are suffering hardship as easementary rights which are in existence for last more than 40 years are curtailed. He would further claim that both the Courts below have committed an error in granting injunction without considering the fact that easementary rights were in existence.

4] Mr. Bodake, learned Counsel for Respondents/Plaintiffs would support the impugned order as according to him, suit is based on title. Teen sheets which are attached on the property is temporary structure of the Respondents/Plaintiffs that too in the property owned by them. He has tried to rely on pleadings in the plaint and documents to substantiate his claim that injunction is sought in relation to private

property of the Plaintiffs over which they are having undisputed title.

5] I have considered the aforesaid submissions.

6] Contention of Mr. Kulkarni that already proceedings under Section 53 of the Village Panchayat Act are taken recourse to by Defendant Nos. 1 to 3 / Grampanchayat is concerned, I hardly see any reason to go into the same at this stage of the suit as the said issue is not under challenge in the suit. It shall be open for the parties hereto to take appropriate steps in the said matter.

7] Fact remains that order of grant of temporary injunction in favour of Respondent Nos. 1 and 2/Plaintiffs is based on their title, evidence in that regard is already discussed in detail in the impugned orders. Petitioners are claiming right of way through the property of the Plaintiffs/Respondent Nos. 1 and 2, which is not spelt out from any of the documentary evidence but for pleadings of the Defendants. Since prima facie title of the Plaintiffs to the suit property can be inferred, in my opinion, Courts below were justified in granting temporary injunction. Rather the nature of temporary injunction

ordered depicts that Trial Court has rightly struck out equities.

8] Against the concurrent findings recorded by the Courts below, I hardly see any reason which warrants interference under extraordinary jurisdiction. That being so, Petition stands dismissed.

(NITIN W. SAMBRE, J.)