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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 9738 OF 2021

SAMBHAJI SARJERAO DOKE

....PETITIONER

V/s.

VIJAY SARJERAO DOKE AND ORS

.....RESPONDENTS

Ms. Komal Mestry i/b PNP & Associates advocate for the Petitioner
Mr. Shantaram Tarale for respondent nos. 1 to 3

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2022.

P.C.:

1) Respondent-Plaintiff initiated a Suit for permanent injunction being R.C.S. No. 705/2018 thereby asking order of restrain against Petitioner-Defendant from using the road situated on the Southern side of the Suit property in East-West direction on the boundary of adjoining Nala. Temporary injunction is sought against the Petitioner from interfering with peaceful use of the said road of the Respondent. Petitioner-Defendant moved Application Exh. 17 seeking temporary injunction against Respondent-Plaintiff thereby directing them not to

create alleged road by cutting trees or removing any impediment.

2) The Trial Court vide its impugned order passed below Exh. 5 & 17 rejected the prayer for grant of temporary injunction of the Plaintiff and allowed prayer of the Petitioner moved vide Exh. 17 thereby restraining Respondent-Plaintiff from creating road. In Misc. Appeal, order of the Trial Court was set aside on 25/11/2021 by learned District Judge -2, Barshi. As such, this Petition.

3) Counsel for the Petitioner-Defendant would urge that alternate road from the government land is already available to the Respondent-Plaintiff. According to her, by way of interim order, fresh road cannot be carved out as has been permitted by the impugned order which virtually amounts to granting final relief. She would further claim that Petitioner has made out a prima facie case against Respondent-Plaintiff vide pleadings through Application Exh. 17. As such, Respondent-Plaintiff ought to have been restrained from creating road.

4) Counsel for Respondent would support the order impugned as according to him, land under cultivation of the Petitioner-Defendant is at all not disturbed as Respondent-Plaintiff has sought temporary

injunction restraining Defendant-Petitioner from obstructing use of the road as is claimed in the Plaint which area is not under cultivation. He sought dismissal of the Petition.

5) Considered submissions.

6) By virtue of relief claimed by way of temporary injunction, Petitioner has sought order of injunction thereby restraining Petitioner-Defendant from interfering in the right of the Plaintiff in the use of East-West road on Southern side of the Nala Bandig located on the border of land of the Petitioner-Defendant.

7) The aforesaid prayer which is granted vide impugned order no way interferes with the cultivated land of the Petitioner-Defendant.

8) The fact that Petitioner and Respondent are joint owners of the respective property same being property of H.U.F. is not disputed. Individual shares of parties are not yet carved out, sufficiently speaks of equal right of rival parties in cultivating their land. That being so, right of the Respondent to use the road and injunction against the Petitioner-Defendant from interfering in use of the road is quite justified.

9) Apart from above, the claim as put forth by the Petitioner in

Exh. 17 seeking temporary injunction in the form of restraining the Plaintiff-Respondent from creating the road is at all not substantiated by any documentary evidence or material on record. The claim of alternate road from Government land is also not established.

10) The fact remains that Respondent-Plaintiff is in cultivating possession of the property and accordingly has rightly so claimed right of access from boundaries/Nala Bandig which is not under cultivation of any of the parties. That being so, there is no loss to either of the parties.

11) No case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]