

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1016 OF 2022

1. Bhika Tikaram Kurwade, Aged 8 years, Occ. Agriculturist
2. Shankar Bhikaji Kurwade, Aged 65 years, Occ. Agriculturist
3. Dnyaneshwar Bhikaji Kurwade, Aged 63 years, Occ. Agriculturist
4. Gangadhr Bhikaji Kurwade, Aged 61 years, Occ. Agriculturist
5. Manohar Bhikaji Kurwade Aged 59 years, occ. Agriculturist

All R/o Sawangi Tq. Warud, Distt. Amravati.

.... PETITIONERS

// VERSUS //

1. Madhav Gulabrao Kurwade Aged 64 years, Occ. Agriculturist
2. Sumantai Madhav Kurwade, Aged 64 years, Occ. - Agriculturist

R/o Sawangi, Tq. Warud, Distt. Amravati.

.... RESPONDENTS

Shri J.Y. Ghurde, Advocate a/w Shri Vipul Bhise, Advocate for the petitioners.

CORAM : ROHIT B. DEO, J.
DATED : 24.02.2022

ORAL JUDGMENT :

1. The petitioners are the defendants who have suffered an injunctive order dated 23.08.2017 in Regular Civil Suit 44 of 2016, whereby the petitioners/defendants are enjoined from restraining the plaintiffs from approaching in field Survey 337 and 338 from the western boundary of field Survey 336, which is owned by the defendants.

2. Concurring with the findings recorded by the learned Trial Judge, the appeal preferred by the petitioners/defendants, is dismissed by the Principal District Judge, Amravati vide judgment dated 23.12.2021.

3. It is irrefutable that the plaintiffs and the defendants are relatives. The defendant owns field Survey 336 admeasuring 6.24 HR having inherited the same from the father of the defendant 1. In the family partition field Survey 337 and 338 fell to the share of legal heirs of Sakharam Kurwade who sold the same to the plaintiffs vide registered sale-deeds executed in the year 1989 and 1995. It is further not in dispute that in the sale-deeds executed, the way which is claimed by the plaintiffs, is duly shown. The plaintiffs have claimed injunctive relief *inter alia* relying on the recitals in the sale-deeds and certain other material to which I shall advert in paragraphs *infra*. Both the Courts have concurrently held that discretion ought to be exercised in favour of the plaintiffs. The learned Trial Judge

relied, not only on the recitals in the sale-deeds, he further relied on the Map drawn by the Talathi, Sawangi, and the affidavit on the record.

4. The learned Appellate Court has found no error in the reasons recorded by the learned Trial Judge.

5. Learned Counsel for the defendants Mr. Vipul Bhise would argue that there is an alternate road available to the plaintiffs and that Court Commissioner ought to have been appointed, which would have made the ground situation clear. It is further submitted that the recitals in the sale-deeds cannot possibly bound the defendants.

6. It is trite law that in exercise of writ or supervisory jurisdiction, concurrent exercise of discretion would be interfered with in the rarest of the rare case. Unless a grave error of law, or perversity of approach or then appreciation of material on record, is demonstrable, this Court would be loath to interfere, particularly since there is a concurrent finding in favour of the plaintiffs.

7. Insofar as the recitals in the sale-deeds, be it noted that the question is not whether the defendants are bound. This aspect shall be dealt with by the trial Judge after the evidence is adduced. However, the fact that the sale-deeds are executed by members of the same family to which the litigating parties belong, 30 and 25 years ago, do make the recitals relevant for the purpose of ascertaining the *prima facie* case. I see no reason to

interfere in writ jurisdiction. The petition is dismissed.

8. The Trial Court is requested to expedite the suit.

(ROHIT B. DEO, J.)

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