

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

**WRIT PETITION NO.3006 OF 2023**

Angad Shankarrao Dure

Petitioner

Versus

Achut Aparao Dure And Another

Respondent

Mr. Satish Manale, Advocate for the petitioner.

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**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 20<sup>th</sup> JUNE, 2023**

**ORDER :**

1. Petitioner/plaintiff is aggrieved by the order passed by learned 5<sup>th</sup> Joint Civil Judge, Junior Division, Latur, below Exhibit-5, in Regular Civil Suit No. 567/2022, thereby rejecting the application for temporary injunction filed by the petitioner. Said order is unsuccessfully challenged by the petitioner in Miscellaneous Civil Appeal No. 124/2022.

2. Petitioner filed suit for declaration and perpetual injunction claiming that he owns and possesses his share in ancestral land in Gut No. 55, admeasuring 0 Hectare 15.5 Are, situated at village Wasangaon, District- Latur and he is in physical de facto possession of the said land (suit property) and the defendants are trying to obstruct him from cultivating the

same. Defendants resisted the suit by filing written statement denying that the plaintiff is in possession of Gut No. 55. They came out with a specific case that in family partition, area of 40 Are out of Gut No. 55 was allotted to the share of Achut and area of 20 Are out of said land was allotted to Vitthal and since then defendants were in legal possession of portion allotted to them. They further claimed that partition in the plaintiff's family took place on 09.06.2003 between Angad, Sonerao, Vinayakrao and Madhukar, in which land Gut No. 54 was partitioned and plaintiff and his family members were allotted their respective shares. Accordingly, mutation entry no. 424 is sanctioned on 21.08.2004.

3. Along with the suit, petitioner filed application Exhibit-5 and after hearing the parties, Trial Court rejected the same and said order is confirmed by the District Court.

4. Heard the learned advocate for the petitioner. Perused the memo of writ petition, annexures thereto and the impugned order.

5. The Trial Court in the impugned order has recorded a finding that '*defendants have not denied plaintiff's area of land*

*even the fact that Block No. 54 is admeasuring 61 Are and land Block No. 55 is admeasuring 60 Are land. Defendants have not denied expressly the constructed house of Yadav Dattu Ghodke on land Block No. 55. This prima-facie shows that, they are not obstructing possession of plaintiff on his land. Mere contesting the suit by defendants would not amount to obstruction as contended by the plaintiff. Hence, the plaintiff has no prima-facie case in his favour.'*

6. It is clear from the record that the plaintiff has failed to prove prima facie case in his favour, balance of convenience does not lie in his favour. No irreparable loss is likely to be caused to the plaintiff on rejection of his temporary injunction application. Finding of fact recorded by the Trial Court on the basis of record is confirmed by the District Court. No case is made out by the petitioner to interfere in concurrent finding of fact in extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

7. Needless to state that, observations in this this order is prima facie and Trial Court shall not be influenced by them at the time of deciding the suit on merits.

**[NITIN B. SURYAWANSHI, J.]**