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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5436 OF 2022

Bhimraj Bansi Bhusal and Another	PETITIONERS
VERSUS	
Shivaji Namdev Bhusl and Others	RESPONDENTS

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Mr. Satyajeet S. Dixit, Advocate for the petitioners
Mr. V.D.Hon, Senior Advocate a/w Mr. A.V.Hon, for respondents

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 5th JULY, 2023

ORDER :

1. The petitioners are aggrieved by the order dated 11th May, 2022 passed by the learned District Judge-3, Sangamner below Exhibit-5 in Regular Civil Appeal No. 21 of 2022, thereby granting stay to the execution of the decree passed in Regular Civil Suit No. 348 of 2013 and directing the petitioners to remove the obstruction created by them in the disputed way after passing the decree within seven days from the date of passing of the order.

2. The petitioners – plaintiffs filed the suit for declaration and perpetual injunction in respect of the suit properties against the respondents – defendants. The suit came to be decreed by the Trial Court, by judgment and decree dated 2nd March, 2022. Respondents – defendants were restrained by perpetual

injunction from causing obstruction to the plaintiffs' possession over the suit properties. A declaration is given that there is no way existing in the suit properties.

3. The respondents, being aggrieved by the judgment and decree, challenged the same, by filing Regular Civil Appeal No. 21 of 2022. In the appeal, Exhibit-5 application is filed for stay of the execution of the decree. After hearing the parties the said application is allowed by the Appellate Court. Hence, the present petition.

4. Heard learned advocate for the petitioners and the learned Senior Advocate for the respondents. Perused the memo of writ petition, documents annexed along with the same and the impugned order.

5. The record indicates that, while deciding the suit, the Trial Court framed issues, wherein issue No.1 is "*Whether plaintiff prove that no way is existence in the suit property?*" and finding is recorded as "*No*". However, while decreeing the suit, the Trial Court declared that there is no way in existence in the suit properties. The Trial Court has held that no documentary evidence, in respect of existence of way in the suit properties since last 15 to 16 years, is given by defendant No.4. The Trial

Court has held that defendant No.4 has admitted that if way is created from the suit properties, then agricultural land of the plaintiff will be reduced for cultivation.

6. Judgment of the Tahsildar rendered in Rasta Case No. 8 of 2018 is placed at Exhibit-68 before the Trial Court. The said Rasta Case was filed by some of the adjoining land owners claiming that the plaintiffs have obstructed the existing way. The Tahsildar after visiting the site and verifying the situation, ordered that plaintiffs should remove the obstruction caused to the existing way and restore the existing way, to the extent of 6 feet in width passing from Gut No.310 and 309 (1) i.e. the suit properties.

7. It is a matter of record that during pendency of the suit, the petitioners did not file temporary injunction application and, therefore, no temporary injunction was operating in favour of the plaintiffs till decision of the suit. In the village map, the way, which according to the petitioners does not exist and which the defendants claim that the petitioners have obstructed, is shown. From the photographs placed on record, it appears that there is existing way, which is obstructed by the petitioners – plaintiffs.

8. While allowing the application Exhibit-5, the Appellate

Court has observed that *prima facie* it appears that road was existing. The Mamlatdar's order is also taken into consideration, wherein it is held that the road is existing and has been blocked by the petitioners.

9. The impugned order is a reasoned order and the Appellate Court has rightly exercised discretion in favour of the respondents. Merely because another view is possible, this Court is not inclined to exercise its extraordinary writ jurisdiction to interfere in the discretionary order passed by the Appellate Court.

10. The writ petition being devoid of substance, is dismissed. No costs.

11. At this stage, learned advocate for the petitioners requests for continuation of interim relief granted by this Court vide order dated 17th May, 2022 for a period of four weeks in order to enable the petitioners to approach the Supreme Court. Interim relief granted by this Court vide order dated 17th May, 2022 shall continue to operate for a period of four weeks from the date of uploading of this order on the website of the High Court.

[NITIN B. SURYAWANSHI]
JUDGE