

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

**34 WRIT PETITION NO.12919 OF 2023**

SAMEER YUSUF SHAIKH AND ANOTHER  
VERSUS  
DAMODHAR VITHOBA ADHANE AND OTHERS

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Advocate for Petitioners : Mr. Rautray Mahesh Tatyrao.  
AGP for Respondent/s-State : Mr. S. P Tiwari.  
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**CORAM : S. G. MEHARE, J.**  
**DATE : 16.10.2023**

**PER COURT :-**

1. Heard the learned counsel for the petitioners.
2. The petitioners/plaintiffs have impugned the judgments and orders of the learned 4<sup>th</sup> Joint Civil Judge Senior Division, Aurangabad, passed below Exh.5 in RCS.No.434 of 2023, dated 03.07.2023 and the learned District Judge-4, Aurangabad in Misc. Civil Appeal No.102 of 2023, dated 06.09.2023.
3. The plaintiffs had filed a suit for permanent injunction restraining the respondents/defendant Nos.1 to 3 from not creating any new road in Gut No.40 of village Gadana, Taluka Khultabad.

4. Learned counsel for the petitioners submitted that the respondents are trying to create a new road in the suit land Gut No.40 of the village Gadana. He has referred to the village map. He also referred to the order of the Tahsildar regarding the dispute over the way passing through Gut No.40. The Tahsildar inspected the spot personally and directed that the plaintiffs shall remove the obstructions in the road running from north in Gut No.36 and upto Gut No.40 towards the western boundary marks. The said order was impugned before Sub Divisional Officer. The appeal of the plaintiffs was also dismissed.

5. Learned counsel for the petitioners submits that both Courts did not consider the fact that there was no road in existence. However, defendants are trying to create a new road through Gut No.40 or Gut No.45 belonging to defendant No.1.

6. Both Courts considered the facts of the case and recorded the findings that they were plaintiffs who had destroyed the approach road available to defendant No.1 from Gut No.36 as well as plaintiff's Gut No.40. The Trial Court has considered the inspection report of the Mamlatdar and further recorded the findings that if the injunction would be granted to the plaintiffs, defendant No.1 would suffer irreparable loss.

Both Courts on facts, arrived at conclusion that no *prima facie* case is made out. The balance of convenience does not tilt in favour of the petitioners and they would suffer no irreparable loss, if the temporary injunction as prayed has been refused. The Court has referred to both the judgments and orders. Both Courts have considered the facts in detail examined, each and every paper filed on record and correctly recorded the findings that it is the plaintiff who had destroyed the road available to defendant No.1 from Gut No.36 and plaintiffs field Gut No.40. The findings are supported with the documents. There is no error apparent on the face of record. There is no scope to exercise the power under Article 227 of the Constitution of India. There is no substance in the petition.

7. For the above reasons, the writ petition stands dismissed at admission stage.

**(S. G. MEHARE, J.)**

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