

WRIT PETITION NO. 2012 OF 2022

Mr. Rupesh A. Zade a/w. Ms. Priyanka Gupta for the Petitioner.
Mr. Sachin Punde for the Respondent nos. 2 and 3.

DATED : 24 JANUARY, 2023

1. By this petition the petitioner assails judgment and order dated 21 January 2022 passed by the District Judge-2, Barshi allowing Miscellaneous Civil Appeal No. 60 of 2019 filed by the respondents herein and set aside order of temporary injunction granted by the trial court on 11 March 2020.

2. The suit is filed by the petitioner/plaintiff seeking injunction in respect of alleged road to access plaintiff's land through the land of the defendants. The suit is filed in the year 2015. The application for temporary injunction came to be decided by the trial court on 26 August 2019 temporarily restraining the defendants from obstructing or interfering in

use of the suit road till disposal of the suit. The Appellate court has proceeded to reverse the order passed by the trial court by judgment and order dated 21 January 2022.

3. The Appellate court has recorded a finding that there exists an alternate road to access the plaintiff's land bearing Gat no.111. It is held by the lower Appellate court that the trial court did not take into consideration the the factum of existence of alternate road. The petitioner/plaintiff in support of the contention of existence of road passing through the land of the defendants submit a copy of sale deed executed by the Advait Pramod Kulkarni in favour of the plaintiff's to the effect that there exists road on western side of the plaintiff's land. It is contended that the plaintiff's purchased the land bearing Gat no. 111 on the basis of representation of existence of the said road.

4. The defendants relied upon affidavit of Mr. Pramod Kulkarni in support of their contention that the road as described in the sale deed is factually not in existence.

5. Whether the road as described in the sale deed exists and whether the plaintiff is entitled to use the same is something

which can be decided at the time of final hearing of the suit. The plaintiff has not been able to demonstrate the case set up by the defendants of existence of alternate road to access plaintiff land at Gat no. 111. Thus during the pendency of the suit the plaintiff can access his land by using alternate road. If in the event the plaintiff is successful in demonstrating before the trial court that the suit road actually exists and that the plaintiff is entitled to use the same he would succeed in the suit. The balance of convenience as of now appears to be created in favour of the defendants and against the plaintiff.

6. The lower Appellate court in my view has not committed any error in lifting injunction granted by the trial court. The suit is of the year 2015 and can be taken up for final disposal in an expeditious manner. In that view of the matter I am not inclined to interfere in the order passed by the lower Appellate court.

7. The writ petition is devoid of merits and the same is dismissed without order as to costs. The trial court shall however expedite hearing of Regular Civil Suit No. 265 of 2015.

(SANDEEP V. MARNE, J.)