

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7578 OF 2023

Nivrutti Kachru Kadam and Ors.

... Petitioners

V/s.

Baburao Bhika Jadhav since deceased

Thr. Legal Heirs and Ors.

... Respondents

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Mr. Vaibhav D. Kadam, a/w Mr. Yash Fadtare a/w Mr.
Shrinath Badade for the Petitioner.

Mr. Tushar Sonawane for Respondent Nos. 1A to 1D.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

PC.:

- 1.** The petitioners are original plaintiffs who filed application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, restrained the defendant from creating road based on order passed by Tehsildar. The Trial Court granted the application, however the Appellate Court rejected application.
- 2.** On perusal of paragraph No.17, it appears that the Appellate Court relied on Panchanama and statement dated 17th July 2019. The statement bears signatures of all the plaintiffs whereby they agreed to clear the road in question. Moreover, the Revenue Authorities have held that the road is alleged by the defendants is in existence.

3. The prima facie finding of the fact arrived at by the Trial Court relying on the contemporaneous document executed in front of Revenue Authorities signed by the plaintiffs at this stage can be basis of prima facie finding of existence of road. Therefore, exercise of discretion by the Appellate Court need not be interfered with.

4. However, it is made clear that the Trial Court shall decide the suit uninfluenced by the observations made in the Court below and uninfluenced by the findings of Revenue Authorities.

5. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)