

Nikita

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

**WRIT PETITION NO.9336 OF 2022**

Dayaram Trambak Sonavane And Ors. ... Petitioners

**V/s.**

Sakhubai Rajaram Birari and Ors. ... Respondents

NIKITA  
KAILAS  
DARADE  
Digitally signed by  
NIKITA KAILAS  
DARADE  
Date: 2023.09.04  
17:53:23 +0530

Mr. Jayendra D. Khairnar for the Petitioners.

Mr. P.N. Joshi for Respondent Nos. 1, 2A to 2C, 3,4.

Mrs. V.S. Nimbalkar AGP for State-Respondent Nos.5 to 7.

**CORAM : AMIT BORKAR, J.**

**DATED : SEPTEMBER 4, 2023**

**P.C.:**

1. Challenge in this petition is to the orders passed by the Court below on an application for temporary injunction refusing to restrain defendants from using suit property (right to way) during pendency of the the suit.

1. It appears that the authority under Section 5 of Malmatdars Court Act, 1906, visited the site and recorded a finding that right to way as alleged by the defendants exists. Based on such inspection, the authority restrained plaintiff from disturbing defendants right to way. The revisional authority under the Act, confirmed the order. Aggrieved thereby, the present petitioner (plaintiff) filed suit for injunction as regards said right to way.

2. The Trial Court and the Appellate Court recorded a prima facie finding of fact that right to way as alleged by the defendant exists.

3. The contention raised by the petitioner that right to way as alleged by the defendant passes through canal which is not permissible in law, has been rightly repelled by the Appellate Court, holding that the property below canal or the canal is not owned by the plaintiff, and therefore, both the Courts refused to grant injunction to the petitioners.

4. On perusal of the impugned order, I find no perversity in the findings recorded by the Courts below which are prima facie in nature. However, the Trial Court shall decide the suit uninfluenced by the observations made in the present order and in the order refusing to grant temporary injunction.

2. With this clarification, the writ petition stands disposed of. No costs.

**(AMIT BORKAR, J.)**