

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1024 of 2020

NARAYAN RAJARAM GADHE VS NARHARI TOTARAM SULTANE

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.V. Bhide, Advocate for the Petitioner

**CORAM : ANIL S. KILOR, J.
DATED : 27.01.2023**

1. Heard.
2. In this petition, a challenge is raised to the judgment and order dated 17.01.2020 passed by the learned District Judge-I, Khamgaon in Misc. Civil Appeal No.13 of 2019, confirming the order below Exh.5 passed by Jt. Civil Judge Junior Division, Shegaon, rejecting the application filed by the petitioner for temporary injunction under Order XXXIX Rule I and II read with Section 151 of the Code of Civil Procedure.
3. It is the case of the petitioner that the petitioner is having right of way by easement of necessity. It is further submitted that an alternate way as noted by both the Courts-below, is a Nullah having depth of 20 feet and therefore, that cannot be the alternate way. He therefore, submits that both the Courts-below have committed error in appreciating the said fact.
4. Shri Bhide, learned counsel for the petitioner therefore, submits that the application Exh.5 may be allowed by setting aside both the impugned orders passed by the Courts-below.

5. None for the respondent, though served long back.
6. I have perused the petition and the documents filed along with the petition.
7. From the record, it can be seen that the application Exh.5 was rejected on 25.04.2019 and thereafter, the appeal was dismissed vide judgment and order dated 17.01.2020. In the present writ petition, no interim protection was granted in favour of the petitioner and as such, there is no order allowing the plaintiff to use the field of the defendant for approaching his field.
8. The time period lapsed after the rejection of Exh.5 is about 4 years. Thus, considering the period lapsed, I am of the opinion that the purpose would be served if the trial Court is directed to expedite the trial and decide the same on or before 12.06.2023. Accordingly, keeping all the issues open and without commenting on the merit of the matter, I pass the following order:
 - i) The petition is **dismissed** with a direction to the trial Court to decide the suit expeditiously, as early as possible, and in any case, before 12.06.2023.

[ANIL S. KILOR, J.]

Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 30.01.2023
19:22