

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

Writ Petition (WP) No. 7082 of 2022

Vishal Pralhadrao Sawarkar and others

Versus

Arun S/o Mahadeorao Futane

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

Court's or Judge's Order

Shri A.Z.Jibhkate, Advocate for the petitioners.

Shri A.M.Sudame, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 26th APRIL, 2023.

Heard.

2. In this writ petition, reversal of order passed below exhibit 5, dated 3rd February, 2022, restraining the defendant temporarily from using right of way of plaintiff nos. 3 and 4 vide impugned order dated 4th July, 2022, passed in Misc. Civil Appeal No. 19 of 2022, passed by the District Judge-1, Amravati, is under challenge.

3. In the present matter, the dispute is in respect of approach way. The plaintiffs filed a suit for simpliciter injunction and prayed for restraining the defendant from obstructing the right of way of the plaintiffs. The plaintiffs filed an application Exhibit 5 which came to be partly allowed vide order dated 3rd February, 2022 and it was reversed by the Appellate

Court. The reversal is on the ground that the suit was for simpliciter injunction without prayer for declaration as regards easementary right.

4. After the impugned order dated 4th July, 2022, passed by the learned lower Appellate Court, the plaintiffs moved an application for amendment seeking declaration that they have an easementary right to approach their field through the field of the defendant.

5. In the circumstances, I am of the opinion that because of amendment made to the plaintiffs, the ground of rejection of the injunction application of the defendant by the Appellate Court does not survive to the extent that the suit was for simpliciter injunction and not for declaration.

6. In that view of the matter, I am of the opinion that the purpose would be served if the petitioners are permitted to make a fresh application in view of the amended prayer clause, seeking temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure. Accordingly, I pass the following order.

i. Writ Petition is disposed of with liberty to apply a fresh for grant of temporary injunction under Order 39 Rule 1 and 2 of Code of Civil Procedure.

ii. The learned trial Court is directed to decide the application on its own merit as per the law without

influenced by the observations made in the order dated 3rd February, 2022 passed below Exhibit 5 or the findings and observations made in the judgment and order dated 4th July, 2022 passed by the District Judge-1, Amravati in Misc. Civil Appeal No. 19 of 2022.

iii. If the application is moved within one week from today, the learned trial Court shall decide the same on or before **19th June, 2023** from the date of filing of the application.

[ANIL S. KILOR, J.]

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