



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 WRIT PETITION NO. 9337 OF 2022

SAMEER GULAB PATEL

VERSUS

RAVINDRA MADHUKAR SURYAWANSHI & OTHERS

...
Advocate for the petitioner : Mr. Shaikh Mohammad Naseer A.

...
CORAM : ARUN R. PEDNEKER, J.

DATE : 13.08.2024

P.C. :

1] Heard the learned counsel for the petitioner.

2] The petitioner is the owner of Gat No.212 and respondent nos. 1 and 2 are the owner of Gat No.215 and the respondent nos. 3 to 5 are the owners of the Gat No.213. The plaintiffs – respondent nos. 1 and 2 have filed Regular Civil Suit No.287 of 2016 for mandatory and perpetual injunction against the petitioner and the respondent nos. 3 to 5 herein. By order dated 06.02.2021, the learned Civil Judge Junior Division, Jalgaon partly decreed the suit thereby directed the defendant no.1 i.e. petitioner to remove thorny fence laid along with South

North common bandh of Gat Nos. 212 and 213, situated at Bornar, Tq. And District Jalgaon within 30 days from the date of order. Against the said order, the petitioner – defendant no.1 has filed Regular Civil Appeal No.116/2021 before the Principal District Judge, Jalgaon. In the said Appeal, the petitioner has also filed an application below Exh.5 for stay and the same is rejected by the Principal District Judge, Jalgaon by order dated 28.07.2022. Against the said order, the present writ petition is filed.

3] It appears that the plaintiffs / respondent nos. 1 and 2 have filed suit, so also, they have also applied for removal of encroachment on the way to approach their Gat No.215 through the boundary Gat Nos.212 and 213 vide Vahiwat Case No.12/2020 before the Mamlatdar Court, Jalgaon. It further appears that the Court Commissioner was appointed for the inspection of the suit way. The evidence is also recorded by the trial Court in the matter. The trial Court has observed that the trail of thorny fence fasten on iron is made at angle and has been laid from

north to south on the eastern side of the suit way and along the bandh [embankment] of Gat No.212. The said iron angles are installed at varying distance of 1 ft. to 3 ½ ft. and fencing has created obstruction in the use of suit way by the respondent nos. 1 and 2. The Appellate Court has held that if the decree is executed, no irreparable loss would be caused to the petitioner.

4] In view of the above, there is no error in the impugned order passed by the District Judge, Jalgaon, hence, no case is made out for interfering in the impugned order. The present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC