



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15345 OF 2023

Dattatraya Raosaheb Bhosale & Others

VERSUS

Rukhmini Trimbak Bhosale & Others

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Ms. A. N. Ansari, Advocate for the Petitioners

Mr. Nitin Jagade, Advocate for Respondent No. 3

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CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Learned Counsel for the Petitioner/Original Plaintiff in RCS No. 116/2023 submits that the learned District Court has committed error in reversing the order passed by the learned trial Court dated 27.04.2023 below Exh. 5 whereby the Defendant Nos. 1 to 3 were restrained from carrying out any construction over the suit property.

3. Learned Counsel for Respondent/Original Defendants opposed the said contention by drawing attention of the Court to the pleadings in the plaint wherein there is no case sought to be made out by the

Petitioner that by the said construction right of way of the Plaintiff is going to be obstructed. It is argued that the suit is filed with the averments that there is no partition of the suit properties and therefore, the Defendants have no right to carryout the construction.

4. Perusal of the record *prima facie* indicates that suit filed by the Plaintiff is restricted to the pleadings that there is no partition of the suit properties belonging to the Plaintiff and Defendants and for this reason Defendant have no right to carryout the construction thereon. Learned trial Court has ignored the fact that there was admission given by the Plaintiff with regard to the previous partition of the suit properties. The said aspect has been rightly taken note by the learned District Court in its order wherein the case of the Plaintiff coupled with the documentary evidence on record is considered in proper perspective. *Prima facie* there is material to indicate that there was partition of the suit properties during the lifetime of the father of the Plaintiff and Defendants. In such circumstances, without making out any case by

the Plaintiff of causing interference by the Defendants in easementary or any other right of the Plaintiff, if any, the learned trial Court was not justified in injuncting the Defendants from carrying out any construction. Moreover, it is not the case of the Plaintiff that the construction is carried out illegally i.e., without obtaining the permission from the competent Authority. In such circumstances, order passed by the learned trial Court is not sustainable and rightly reversed by the learned District Court.

5. In view of the above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani