



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

CIVIL WRIT PETITION NO. 5948 OF 2024

Yashwant Malhari Salunkhe
(Since Deceased Through His
Legal Heir)

...Petitioner

vs.

Popat Shamrao Pharande And Ors.

...Respondents

Mr. P. B. Gujar	Advocate for the Petitioner
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CORAM : S. M. MODAK, J.

DATE : 10th DECEMBER 2024

P.C. :-

1. Heard learned Advocate for the Petitioner-Defendant No. 2.
2. The dispute in between the Plaintiff and original defendant is about right of way. Learned Advocate for the Petitioner has tendered copy of the plan in order to explain the pleading of the Parties. It is taken on record and marked as 'Annexure-X'. Strip of land is shown as right of way.
3. The Plaintiff has prayed for injunction against the Defendants from disturbing the Plaintiff's use. Whereas Defendants have filed counter claim asking for declaration that the agreement dated

25.03.1986 was never acted upon, it was the same agreement executed in between the Plaintiff and one Sonabai Ingawle. On the basis of this agreement, Plaintiff is claiming right of way.

4. There was temporary injunction application filed by the Plaintiff. He succeeded. There was also temporary injunction application filed by the Defendants. It was filed on the premise that Plaintiff is using this right of way for the purpose of the visitors to marriage hall constructed by the plaintiff on his land. **According to the Defendants that is how the Plaintiff wants to expand the scope of the existing use. The Defendants have failed** in convincing the trial Court for granting injunction. This was as per order dated 06.12.2022, page no. 55.

5. On this background, the Respondents have filed an application for amendment in the Written Statement. It was rejected by the trial Court as per order dated 07.11.2023. This is challenged by Defendant No. 2. The contention is amendment application has to be decided on the basis of the averment and the documents annexed to it and the trial Court cannot go into merits of the amendment.

6. It is submitted that suit is fixed for evidence. Plaintiff has filed affidavit of examination-in-chief. The Defendants are at liberty to

conduct the cross-examination. Certainly they can put a question on the basis of the original averment in the Written Statement. They can reserve their right to conduct further cross-examination on the basis of the amendment sought in the Written Statement which is rejected. At that stage, the trial Court may adjourn the matter when requested by the Defendants.

7. Issue notice before admission to the Respondents returnable on 05th February 2025. Additionally, private notice is allowed and service affidavit be filed.

[S. M. MODAK, J.]