



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 WRIT PETITION NO. 9671 OF 2024

1. Shivaji Gangaram Shingade
Died (Deleted)
2. Nitantalibai wd/o Shivaji Shingade
Age : 64 years, Occu : Household,
R/o Andhori, Tq. Ahmedpur,
Dist. Latur ...Petitioner

VERSUS

Sau. Sujata w/o Santosh Mahajan
Age : 43 years, Occu : Household & Agri,
R/o Kapal Galli, Udgir,
Tq. Udgir, Dist. Latur ...Respondent

...
Mr. Jayant R. Patil, Advocate for the Petitioners
Mr. Shelke Devidas Rangnath, Advocate for Respondent/sole

...
CORAM : ROHIT W. JOSHI, J.

DATED : 22th JULY 2025

ORAL JUDGMENT :-

1. The present petition is filed by original defendant challenging judgment and order dated 08.05.2024 passed by the learned District Judge-1, Ahmedpur, District Latur in Miscellaneous Civil Appeal No.03 of 2020 whereby order dated 12.12.2019 passed by the learned 3rd Jt. Civil Judge Junior Division, Ahmedpur, Dist. Latur on application at Exhibit-5 in Regular Civil Suit No.87 of 2018 came to be reversed in as much as the application for temporary injunction

which was rejected by the learned Trial Court is allowed by the learned Appellate Court.

2. Dispute between the parties pertains to a road allegedly passing through the field of the plaintiff. The plaintiff had earlier filed a suit for injunction against the defendants restraining them from using the said road being Regular Civil Suit No.189 of 2009. The said suit was dismissed in default on 03.01.2013. There is no disclosure about the dismissal of the said suit in the present suit i.e. Regular Civil Suit No.87 of 2018. The learned Trial Court considered this to be a material suppression of fact and rejected the application for grant of temporary injunction although the learned Trial Court has recorded that *prima facie* the material on record indicated that there was no road passing through the field of the plaintiff. This observation by the learned Trial Court is made in paragraph 7 of the order.

3. The plaintiff challenged order dated 12.12.2019 rejecting the application for grant of temporary injunction vide Miscellaneous Civil A No.03/2020. The learned Appellate Court has observed that since relief of injunction restraining the person from using any portion of immovable property as a road is a continuing cause of action, non

disclosure of filing of earlier suit and dismissal thereof in default was not a material suppression. As regards merits, the learned Appellate Court has observed that the material on record did not indicate existence of road through the land of the plaintiff. Accordingly, the learned Appellate Court allowed the appeal.

4. The original defendant has filed present petition challenging the said order of temporary injunction. Although it would have been desirable for the plaintiff to make a disclosure of dismissal of earlier suit in default, having regard to the nature of suit and time of five years between the date of dismissal of earlier suit and filing of fresh suit, *prima facie* the conclusion drawn by the learned Appellate Court that the suppression was not a material suppression does not warrant any interference. That apart both the Courts have observed that the material on record does not indicate existence of road through the suit property.

5. In view of the aforesaid, no case is made out for interference in the present petition. The writ petition is therefore dismissed.

6. The learned Counsel for the petitioner makes a request for directing the learned Trial Court to expedite the suit. The suit is filed

in the year 2018 and is pending for a period of around seven years. Having regard to the aforesaid, it will be expedient to direct the learned Trial Court to decide the suit as expeditiously as possible and in any case before 30.04.2026.

[ROHIT W. JOSHI, J.]