

Sayali

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

WRIT PETITION NO.13726 OF 2022

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Namdeo Dhondiram Gore and Another ... Petitioners

V/s.

Bhimrao Maruti Suryawanshi ... Respondent

Mr. Datta Mane, Advocate for Petitioners.

Mr. Umesh R. Mankapure, Advocate for Respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 15, 2025

P.C.:

1. The Petitioner/Original Plaintiff challenges the judgment and order passed by the Courts below rejecting their application for a temporary injunction.

2. According to the Petitioners, the subject road, which is the bone of contention between the Petitioners and the Respondents, constitutes the Petitioners' exclusive property. They assert that the Defendants have no legal right to disturb the Petitioners' possession and enjoyment of the said property. In contrast, the Defendants argue that the suit property is a road, which has been in existence for a considerable period, and that they are entitled to access their fields through the said road. This contention raises significant issues regarding ownership and the character of the road in question.

3. The Trial Court rejected the Petitioners' application for a temporary injunction, recording a prima facie finding based on the material produced by the Defendants that the road exists and has been used by the Defendants as a means of access to their fields. The Appellate Court, upon re-evaluating the material and submissions, affirmed this finding. Both Courts have observed that the evidence adduced by the Defendants, including documentary and oral evidence, creates a presumption of the road's existence and its character.

4. It is pertinent to note that the evidentiary value of the material, including the report of the Court Commissioner and other documents produced by the parties, remains to be adjudicated at the trial. The Trial Court, while conducting the trial, shall allow the Defendants an opportunity to cross-examine the Court Commissioner and test the veracity of the report. The findings recorded by the Courts below are prima facie in nature and limited to the disposal of the temporary injunction application. These findings shall not prejudice the Trial Court in its final adjudication of the suit on merits.

5. The parties retain their right to lead evidence in support of their respective claims. The Trial Court, after framing the necessary issues under Order XIV Rule 1 of the Code of Civil Procedure, 1908, shall adjudicate the suit independently and uninfluenced by any observations made by the Courts below in their impugned orders. It is reiterated that the final decision in the suit shall rest solely on the evidence led by the parties and the applicable legal principles.

6. Considering the nature of the dispute and its potential impact on the parties' rights, it is directed that the Trial Court shall expedite the proceedings in Regular Civil Suit No. 05 of 2022 and conclude the trial within six months from the date of receipt of this order.

7. The Petition stands disposed of with the above directions. No order as to costs.

(AMIT BORKAR, J.)