

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 15287 OF 2024
IN
APPEAL FROM ORDER NO. 865 OF 2024**

The Equus Stud Private Limited

.....Appellant

Vs.

Dharmil A Bodani and ors

.....Respondents

Mr. J. P. Sen, Senior advocate a/w Mr. Siddharth Chabria a/w Ms. Simran Wagle i/b Ms. Uma Kshirsagar Wagle for the appellant
Mr. Venkatesh Dhond, Senior advocate a/w Mr. Kunal Mehta, Ms. Akanksha Saxena, Ms. Jigisha Vadodria, for respondent nos. 1 and 2
Mr. Aashish Kamat, Senior Advocate a/w Mr. Kunal Mehta, Ms. Akanksha Saxena, Ms. Jigisha Vadodaria, i/b Negandhi Shah and Himayatullah for respondent no. 3

CORAM : GAURI GODSE, J.

DATE : 3rd FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties. The appeal has already been admitted. The appeal challenges the order of injunction passed in a suit of respondents nos. 1 to 3. By the impugned order in the appeal, there is a temporary injunction granted, which reads as under:

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“1] The application Exh. 5 is allowed.

2] The defendant no. 1 is restrained temporarily till disposal of the suit from obstructing plaintiffs from using the suit road which passes through lands owned by the defendant no. 1.

3] The defendant no. 1 is hereby directed by temporary mandatory injunction to fill-up dug-up portion on the suit road and to remove wall, construction and/or other fixtures where the width of the suit road which passes through lands owned by the defendant no. 1 is squeezed for less than 20 feet within 15 days from this order.

4] Costs in cause.”

2. This interim application is filed in a suit seeking a declaration that plaintiff no. 3 is entitled to an undivided share, right, title and interest in a common access road shown on the map to pass through Gat No. 144. The plaintiffs also prayed for a declaration in favour of plaintiff no. 3 to use the common access as owner. In the alternative, the suit is filed for declaration of easementary rights. In this suit, a temporary injunction is granted restraining the present appellant from obstructing the plaintiffs from using the suit road, which passes through the lands

owned by the appellant. The impugned order further issues a mandatory injunction to fill up the dug up portion of the suit road and to remove the wall, construction and other fixtures where the width of the suit road, which passes through the land owned by the appellant, is reduced to less than 20 feet in width. This interim injunction is challenged by defendant no. 1 in the present appeal.

3. Learned senior counsel for respondent nos. 1 and 2 and learned senior counsel for respondent no. 3, i.e. original plaintiffs submitted that there is a specific assertion in the plaint that the plaintiffs have been using the suit road for more than 20 years, and thus, they have easementary rights. They submit that apart from the prayer for the declaration of a right in the common access road, a specific prayer is also for the declaration of the easementary right. It is submitted on behalf of the plaintiffs that in a suit filed by respondent nos. 1 and 2 in this court regarding the shareholding of respondent no. 3 company, the Court Receiver was appointed in the year 2004. It is, thus, submitted that since the date of appointment of the Court Receiver, the plaintiffs are using the access road as they are appointed as agents of the Court Receiver.

4. To support the submissions, the learned senior counsels for the

plaintiffs relied upon the Court Receiver's report, which, according to them, indicates that since 2021, a stud farm belonging to respondent no. 3 is being used through the access road as described in the suit. Thus, the plaintiffs relied upon the appointment of the Court Receiver in the year 2004 and the Court Receiver's report to support their submissions that the plaintiffs have an easementary right to use the said road, which passes through the property of the appellant. Learned senior counsels for the original plaintiffs relied upon the Court Receiver's report dated 16th December 2022 and a letter dated 14th February 2018 issued by the appellant's advocate. The learned senior counsels for the plaintiffs submitted that the Court Receiver's report and the letter issued by the appellant's advocate would indicate that the plaintiffs are using the suit road by way of an easement. Learned senior counsels for the plaintiffs, therefore, submit that the impugned order is passed based on the documents on record, which prima facie indicate that the plaintiffs are using the road by way of an easement. They, therefore, oppose the grant of any interim relief in the present appeal.

5. Learned senior counsel for the appellant submits that prima facie findings recorded by the learned Judge in the impugned order are not

based on any document. He submits that the documents relied upon by the plaintiffs pertain to the year 2018–2022. According to the learned counsel for the appellant, the Court Receiver’s report and the advocate’s letter nowhere indicate that the plaintiffs are using the suit road by way of easement. He submits that the appellant, i.e. defendant no. 1 relied upon a private architect report submitted by the appellant in this Court in Interim Application (L) No. 16819 of 2023 in Appeal (L) No. 16253 of 2023 in Suit No. 924 of 2001. He submits that the said report was relied upon by the appellant in the present suit. He submits that the said report records that there is an alternate road available to the present plaintiffs, i.e. respondent nos. 1 to 3. He submits that there was no objection raised by respondent nos. 1 to 3 to the said report, which was placed before the Court in the present suit. He, therefore, submits there is an alternate road available to the plaintiffs. He submits that in the absence of prima facie right, the plaintiffs are not entitled to seek injunctions against the appellant (defendant no.1) with respect to his property. He, thus, submits that the impugned order needs to be stayed during the pendency of the appeal.

6. I have perused the papers of the appeal. The impugned order is in the nature of a mandatory injunction directing the appellant to

remove the wall, construction and other fixtures from the land owned by defendant no. 1, i.e., the present appellant. The operative part of the impugned order itself indicates that the removal of wall, construction, and other fixtures on the property owned by the appellant is directed to be removed. The first part of the impugned order is in the form of a temporary injunction restraining the present appellant from obstructing the plaintiffs from using the suit road, which passes through the land owned by defendant no. 1, i.e. the present appellant.

7. The reasons recorded in the impugned order are based on the observation that the material available on record indicates the existence of the suit road and the use of the suit road by the plaintiffs for more than 20 years. However, the documents relied upon by the plaintiffs pertain to the year 2018-2022. The Court Receiver is appointed by this Court in a suit filed by respondents nos. 1 and 2 where the present appellant is not a party. The dispute in the suit where the Court Receiver is appointed is for management of the stud farm as there is a dispute regarding the shareholding of respondent no. 3, who owns the stud farm. The appointment of the Court Receiver does not concern the access road claimed by plaintiffs in the present suit. The prayers in the suit pertain to a declaration of the common use

of the road and easementary rights. Rival contentions between the parties pertain to the right to use the road, which admittedly passes through the appellant's property.

8. For claiming the interim injunction in a suit claiming easementary right, the plaintiffs are required to show documents that would at least prima facie indicate that the plaintiffs have been using the road for last more than 20 years. The existence of the road is, therefore, immaterial, and the prima facie evidence is necessary to indicate the use of the said road for claiming easementary rights. There is also no material on record to indicate any right on the claim of right on the alleged common road.

9. The material relied upon by the present appellant to indicate the existence of an alternate road is not considered in the impugned order. While deciding the interim application of respondent nos. 1 to 3, the learned Judge observed that the appellant's contention regarding the alternate way and the existence of an alternate way would not be relevant for deciding the easementary right. The observations made in the impugned order are not based on any documents that would prima facie indicate that the plaintiffs are using the road, which admittedly passes through the appellant's property. Hence, in view of the

aforesaid facts, the reasons recorded in the impugned order do not satisfy the basic principles for the grant of a temporary injunction.

10. The reasons recorded in the impugned order do not indicate whether the balance of convenience, prima facie case and irreparable loss is considered while granting the order of injunction, which affects the ownership rights of the appellant. The second part of the impugned order pertains to mandatory directions for the removal of the construction, a wall which is on the appellant's property. The impugned order does not record any reasons for issuing such mandatory directions.

11. Hence, during the pendency of the appeal, there will be interim relief in terms of prayer clause (a).

12. It is clarified that the pendency of the appeal and grant of interim relief should not be construed as a stay to the proceedings in the trial Court. The trial Court shall proceed with the suit.

[GAURI GODSE, J.]