IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4281 OF 2025

1. Manohar Uttam Savale,
Age-61 years, Occu. Agriculturist.

2. Prakash Uttam Savale,
Age-55 years, Occu. Agriculturist.

3. Devram Uttam Savale,
Age-50 years, Occu. Agriculturist.

4. Bhavrao Uttam Savale,
Age-57 years, Occu. Agriculturist.

All, R/o. Punkheda,
Tal. Raver, Dist. Jalgaon

(Respondents in M.C.A. No. 20 of 2024)
(Plaintiffs in R.C.S. No: 62 of 2021)
...Petitioners

Versus

1. Kishor Dalpat Koli,
Age-43 years, Occu. Agriculturist

2. Laxman Dalpat Koli,
Age-53 years, Occu. Agriculturist

3. Smt. Indubai Dalpat Koli,
Age-58 years, Occu. Agriculturist

4. Sindubai Shriram Koli,
Age-29 years, Occu. Household

5. Madhuri Nilesh Koli,
Age-28 years, Occu. Household

6. Chandrabhagabai Prakash Koli,
Age - 65 years, Occu. Household

7. Yogesh Prakash Koli,
Age - 26 years, Occu. Agriculturist

8. Nirmala Prabhakar Koli,
Age-56 years, Occu. Household

9. Punam Jitendra Koli,
Age - 28 years,
R/o. Bornar, Tal. & Dist. Jalgaon.

10. Durga Rahul Koli,
Age - 25 years, Occu. Household

11. Shubham Prabhakar Koli,
Age - 56 years, Occu. Household

Nos. 1 to 11 R/o. Shivaji Chowk, Raver,
Tal. Raver, Dist. Jalgaon.

12. Pramila Baburao Koli
Age - 58 years, Occu. Household

13. Ushabai Namdeo Koli,
Age - 48 years, Occu. Household

14. Aashabai Rajendra Sapkale,
Age-31 years, Occu. Household

No. 12 to 14.
R/o. Punkheda, Tal, Raver, Dist.Jalgaon

15. Shashikala Mohan Sonawane,
Age-51 years, Occu. Household
R/o. Jainabad area, Old Jalgaon,
Tal. Jalgaon, Dist. Jalgaon

16. Pratibha Ghanshyam Koli,
Age - 23 years, Occu. Household
R/o. Sangvi, Tal. Yawal, Dist. Jalgaon

17. Chandra Prakash Koli
Age - 23 years, Occu. Household
R/o. Waghadi, Tal. Raver, Dist. Jalgaon

(Appellants in M.C.A. No. 20 of 2024)
(Defendants in R.C.S. No. 62 of 2021)

...Respondents

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- Mr. D. A. Mane h/f Mr. M. M. Patil, Advocate for the Petitioners
- Mr. V. N. Shinde, Advocate for the Respondent Nos. 1 to 4, 6, 8, 11, 12

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CORAM : S. G. CHAPALGAONKAR, J
DATE : MAY 06, 2026

PC :

1. The present Writ Petition takes exception to order dated 30.07.2024 passed by Adhoc District Judge, Bhusawal in Miscellaneous Civil Appeal No. 20 of 2024, whereby order dated 21st February, 2024 passed by Civil Judge, Junior Division, Raver below Exhibit 6 in RCS No. 62 of 2021 has been quashed and set aside, whereby trial Court had granted mandatory and temporary injunction against Respondents.

2. The Petitioners are original plaintiffs and Respondents are original defendants in RCS No. 62 of 2021. The suit has been instituted seeking measurement, fixation of boundaries of suit land and recovery of possession of encroached land and perpetual injunction restraining Respondents from interfering with existing approach way to suit lands from Gut No. 648/1/b and 648/2 situated at Raver. In short, Plaintiffs claims that they are owners of land Gut No. 648/1B and 648/2 situated at Raver whereas Respondents/Defendants are owners of land Gut No. 648/1/A. All three lands are part of original Gut No.648. The Plaintiffs purchased land from Gut No.648/1/B from Defendants' mother under

registered sale deed dated 04.01.1996 whereas purchased Gut No.648/2 from Defendants' cousin brother. It is contention of Plaintiffs that there was customary way over western portion of Gut No.648/1/A and defendants have disturbed it.

3. It appears that during pendency of suit, Court Commissioner was appointed. He submitted report that he could not notice marks of customary way over defendants land. Similarly, there is no convenient alternate way to Plaintiffs to approach their land. The Commissioner's report neither advances case of Plaintiffs nor it supports contention of Defendants.

4. Plaintiffs had filed an application for grant of temporary and mandatory injunction below Exhibit 6 in suit. The trial Court, upon appreciation of evidence on record, particularly report of Court Commissioner, observed that approach way as claimed by Plaintiffs from western side of Raver Punkheda asphalt road from point no.E to point nos. G, H is convenient to approach their land and Plaintiffs have no other way to approach suit properties. The trial Court observed that previously land of Plaintiffs and Defendants were part of Gut No.648. The Plaintiffs purchased land from family members of Defendants. In absence of any alternate access way, claim of Plaintiffs can be accepted particularly when Plaintiffs have filed supporting affidavits of three

witnesses depicting existence of plaintiffs' right of way. The trial Court has also relied upon satellite images of spot and photographs. Accordingly, temporary injunction from causing obstruction/interference in use of the suit way by Plaintiffs is ordered while granting mandatory injunction to open the way from point No. G & H till point no. E as indicated in report of Court Commissioner.

5. Aggrieved Defendants filed Miscellaneous Civil Appeal No.20/24 before District Judge at Bhusawal which came to be allowed observing that photographs and satellite images cannot be relied at this stage. The report of Court Commissioner is not sufficient to establish easementary way on Defendants land. Even otherwise, in terms of Section 22 of Indian Easement Act, right of way at intermediate point over land of subservient owner cannot be permitted.

6. Mr. Mane, learned Advocate appearing for Petitioners, submits that Appellate Court exceeded jurisdiction while reversing well-reasoned order passed by trial Court. There is voluminous evidence to show that Plaintiffs were using customary way to approach their lands and recently Defendants have created obstruction for use of said way. He submits that Plaintiffs have purchased land in question under registered sale deed. The Defendants' mother transferred said land in favor of Plaintiffs. The sale deed itself recognized Plaintiffs' right of way.

7. Per contra, Mr. Shinde, learned Advocate appearing for Respondents, supports impugned order.

8. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of record tendered into service, it can be observed that dispute in present suit is predominantly as regards to right of way of Plaintiffs from land Gut No.648/2 owned by Defendants to access land Gut No.648/1/B and 648/2. Apart from pleadings in plaint, Plaintiffs have relied upon affidavits of three adjacent owners, contents of sale deed whereby they have purchased land from family members of Defendants and report of Court Commissioner. The Petitioners have also relied upon certain photographs and google images in support of their contention. The Defendants are refusing Plaintiffs right of way as claimed.

9. The perusal of Commissioner's map depicts that except customary way as claimed by Plaintiffs, there is no convenient way to access Plaintiffs land. Evidently, Plaintiffs are claiming right of way from mid of Defendants land. The Court Commissioner could not notice existence of access way as claimed. However, Commissioner's report clarifies that except access way as claimed by Plaintiffs, they have no alternate way to access their land.

10. Undisputedly, Plaintiffs have purchased land under registered sale deed from family members of Defendants who were owner of entire Gut No.648. The copy of sale deed executed by Defendants mother, Shevantabai, states that Plaintiffs would have right to access land of Gut No.648/1/B from land Gut No.648/2 situated on southern side. If statement in sale deed is examined, there appears mention about south-north way from Gut No.648/2 to approach Gut No.648/1/B. There is no clarification as to position of Pot Kharab land where from access way was maintained in favor of Plaintiffs' purchaser. The Defendants are conveniently avoiding to explain position of access granted to Plaintiffs at time of execution of sale deed.

11. It is discernible that at present Plaintiffs have cultivated banana crop in their land, which is ripped for harvesting and they do not have access way. Prima facie, this Court finds that if Defendants family members made available access way to Plaintiffs under registered sale deed, its existence can be presumed. In that view of matter, this Court finds that trial Court on appreciation of material on record had rightly passed order of temporary and mandatory injunction. The Appellate Court disturbed well-reasoned order in exercise of appellate jurisdiction.

12. It is well settled that Appellate Court should not interfere

with exercise of discretion of Court of first instance and substitute its own discretion except where discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where Court had ignored settled principles of law regulating grant or refusal of interlocutory injunctions.

13. In case of ***Wander Ltd. And Another vs. Antox India P. Ltd, 1990 (Supp) Supreme Court Cases 727***, Hon'ble Supreme Court has observed that "An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

14. In light of aforesaid exposition of law and peculiar facts of this case, impugned order cannot be sustained particularly when Plaintiffs have absolutely no alternate way to approach their land,

although said right was approved under sale deed executed by Defendants family members. In result, Writ Petition is allowed in terms of prayer clause 'C'.

(S. G. CHAPALGAONKAR, J.)

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