

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

WRIT PETITION NO. 128 OF 2026

Nandkumar Moreshwar Patil & Anr. ..Petitioners

Versus

Champavati Madhukar Patil & Ors. ...Respondents

Mr. Surel Shah, Senior Counsel, a/w Mr. A. R. Gore a/w Ms.
Vishwali V. Botle, for petitioners.

CORAM : N. J. JAMADAR, J.
DATE : 20th JANUARY 2026

ORDER:

1. Heard the learned Counsel for the parties.
2. This Writ Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 11th November, 2025 passed by the learned Principal, District Judge, Thane in Miscellaneous Civil Appeal No. 01/2024, whereby the appeal preferred by the petitioners - original plaintiffs against an order passed by the Trial Court on 06th November, 2023 thereby rejecting an application for temporary injunction, came to be dismissed.
3. Mr. Shah, the learned Senior Advocate for the petitioners, submitted that, the Courts below have committed a manifest error in not appreciating the fact that, the deceased Defendant

No. 1 had no right to execute the deed of right of way dated 14th March, 2008, in favour of the Defendant No. 2 as deceased Defendant No. 1 was a co-owner of the suit property, with an undivided interest therein. Under no circumstances, the Defendant No. 1 could have granted a right of way over a particular portion of the suit property. Thus, the impugned orders suffer from the vice of perversity warranting interference in exercise of the supervisory jurisdiction, urged Mr. Shah.

4. I find it difficult to accede to the aforesaid submission of Mr. Shah. The learned Civil Judge and the learned District Judge have recorded concurrent *prima facie* findings of fact, advertent to the aspect of delay in assailing the legality and validity of the said deed of right of way, the developments in the intervening period, including the grant of development permission by the Planning Authority taking into account the said right of way and the element of balance of convenience as not only the occupants of the building constructed on the suit property but the occupants of the buildings on the adjoining lands are using the said access.

5. Whether the deceased Defendant No. 1 had a right to grant a right of way, what was the share of the deceased Defendant No. 1 in the suit property, and whether the property

over which right of way had been granted exceeds the share of the deceased Defendant No. 1 are all the matters for adjudication at the trial. In exercise of writ jurisdiction, this Court is not expected to review, re-appreciate and re-weigh the material on the basis of which the Courts have recorded concurrent *prima facie* findings. In any event, the balance of convenience does not tilt in favour of the petitioners.

6. Resultantly, this Court does not find any justifiable reason to interfere with the impugned orders. The Writ Petition thus stands dismissed.

7. As the learned Principal District Judge has expedited the trial in Suit no. RCS/627/2017, the learned Judge seized with RCS/627/2017 is requested to hear and decide the suit within the time stipulated by the learned Principal, District Judge i.e. by the end of December, 2026.

[N. J. JAMADAR, J.]