



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1618 OF 2025

PETITIONER : Amol S/o. Dhanraj Kohale, Aged 36 years,
Occ: Agriculturist, R/o. Wadala, Tq. Warud,
District – Amravati.

...VERSUS...

RESPONDENTS : Pandurang S/o. Manikrao Nikam, Aged 71
years, Occ: Agriculturist, R/o. Wadala, Tq.
Warud, District – Amravati.

Mr. Swapnil Shingane, Advocate for Petitioner.
Mr. Kapil Deshmukh, Advocate for Respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 17/02/2026
PRONOUNCED ON : 06/04/2026

ORAL JUDGMENT :

1. Heard. RULE. Rule is made returnable forthwith. Learned counsel for the petitioner as well as learned counsel for the respondent have advanced elaborate arguments and the matter was heard extensively at the stage of final disposal.

2. By this petition, the petitioner / original defendant has raised a challenge to the judgment and order dated 11.03.2025 passed by the District Judge-1 & Additional Session Judge, Warud, allowing the appeal bearing Misc. Civil Appeal No.4/2023 and reversing the order of

temporary injunction passed by the Trial Court. This case deals with an interesting issue about entitlement of the plaintiff for temporary injunction for right of an approach way based on an easement by grant, as reflected in the recital incorporated in the Sale Deed.

3. The facts leading to the instant petition are succinctly stated below:-

i. The petitioner is original defendant and respondent is original plaintiff. The respondent herein has filed a suit bearing Regular Civil Suit No.51/2021 seeking a relief of declaration and mandatory injunction about a right of way as shown by letter 'A' to 'B' in the plaint map, which falls in the land owned by the petitioner / original defendant and which is on the boundary (Dhura), by removing the twenty one (21) Mosambi Trees (Sweet Lemon Trees) from the land of the defendant. The original plaintiff is owner of the land bearing Survey No.400 and the original defendant is the owner of land bearing Survey No.401, both are situated adjacent to each other ;

ii. Alongwith the plaint, a separate application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908

(hereinafter for short referred to as “CPC”) seeking temporary injunction was also filed ;

iii. The original defendant filed its reply to the temporary injunction application and opposed it ;

iv. By an order dated 27.06.2022, the application for temporary injunction came to be rejected ;

v. The original plaintiff, thereafter, filed an Appeal under Order XLIII Rule 1(r) of CPC, which came to be allowed by judgment and order dated 11.03.2025 by which, the application for temporary injunction was allowed and the defendant was temporarily restrained from causing any obstruction to the plaintiff’s right to use the disputed way shown by letter ‘A’ to ‘B’ in the plaint map.

vi. Feeling aggrieved by this judgment and order dated 11.03.2025, the petitioner / original defendant has filed the instant petition.

4. While assailing the impugned judgment and order passed by the Appellate Court, the learned counsel for the petitioner Advocate Mr. Swapnil Shingane, submitted that the impugned judgment and order passed by the Appellate Court is unsustainable since, the same is passed without considering the Commissioner's Report dated 20.11.2021, which specifically records that there is no approach way for bullock cart from the land belonging to the original defendant. He submitted that the discretionary order passed by the Trial Court warranted no interference since the same was passed by considering all the relevant aspects including the case put up by the plaintiff in the plaint, the reliefs claimed by way of application for temporary injunction and the Commissioner's Report which was placed before the Trial Court. By inviting my attention to the reliefs claimed in the plaint seeking an approach way from Point 'A' to 'B' of the plaint map and the relief claimed by way of temporary injunction application about an approach way from point 'C' to 'D' of the plaint map, he submitted that the relief claimed by temporary injunction application was itself contrary to the relief claimed in the suit and therefore, the temporary injunction application deserved to be rejected. He also submitted that the Appellate Court failed to consider that granting of an approach way from the land belonging to the

original defendant would cause loss to the standing sweet lemon trees, which are there in the cultivating field of the original defendant. He submitted that the plaintiff failed to establish *prima-facie* case and further the defendant will be put to irreparable loss, in case injunction is granted. He further submitted that the interim injunction granted by the Appellate Court is in the nature of final relief and therefore, the impugned judgment and order is unsustainable in law.

5. In support of his submissions Advocate Mr. Swapnil Shingane, learned counsel for the petitioner placed reliance on the following judgments :-

Sr. No.	Particulars
i.	<i>Jai Singh and Others Vs. Municipal Corporation of Delhi and Another</i> reported in <i>2010 (9) Supreme Court Cases 385</i>
ii.	<i>Rameshwar and Others Vs. Jot Ram and Another</i> reported in <i>1976 (1) Supreme Court Cases 194</i>
iii.	<i>Chandra Singh and Others Vs. State of Rajasthan and Another</i> reported in <i>2003 (6) Supreme Court Cases 545</i>
iv.	<i>Dalpat Kumar and Ors. Vs. Prahlad Singh and Ors.</i> reported in <i>AIR 1993 SC 276</i>
v.	<i>UTO Nederland B.V. and Another Vs. Tilaknagar Industries Ltd.</i> Appeal No.66/2012 decided on 28.04.2025
vi.	<i>J. Ganapatha and Others Vs. N. Selvarajalou Chetty Trust Rep. By its Trustees and Others</i> reported in <i>2025 SCC OnLine 633</i>

6. By pointing out the position of law laid down in the above mentioned judgments, learned counsel for the petitioner submitted that no interference was warranted by the Appellate Court with the discretionary order of temporary injunction only on the pretext of the mere wrong appreciation of factual aspects. By pointing out the position as laid down in **Jai Singh (supra)**, he submitted that the Appellate Court is not required to re-appreciate the evidence and substitute its own conclusions contrary to the discretionary order passed by the Appellate Court. By pointing out position from the judgment of **Rameshwar (supra)** and **J. Ganapatha (supra)**, he submitted that even for moulding relief and disturbing the discretionary order, the Appellate Court was expected to exercise restraint. By pointing out the legal position from the judgment of **Dalpat Kumar (supra)** and **UTO Nederland (supra)**, he submitted that the Appellate Court ought not to have interfered with the discretionary order passed by the Trial Court which was passed on the basis of material available before it.

7. Per contra, Mr. Kapil Deshmukh, learned counsel for the respondent vehemently submitted that the impugned order passed by the Appellate Court is justified since it is passed by considering the right of way, in view of easement by grant as stated in the recital incorporated in

the Sale Deed dated 06.04.2018. He also submitted that the Trial Court has recorded erroneous findings on incorrect reading of the Commissioner's Report and the order passed by the Trial Court rejecting the application for temporary injunction was required to be interfered. He further submitted that the Commissioner's Report is in-fact in favour of respondent and even the report of the Tanta Mukti Cell is in favour of the original plaintiff. He therefore submitted that the Trial Court had failed to exercise the discretion properly and in view of glaring errors committed by the Trial Court in rejecting the application for temporary injunction, the interference by the Appellate Court was warranted, as rightly done.

8. In support of his submissions Advocate Mr. Kapil Deshmukh, learned counsel for the respondent placed reliance upon the following case-laws :-

Sr. No.	Particulars
i.	<i>Hero Vinoth Vs. Seshammal</i> reported in <i>2006 (5) SCC 545</i>
ii.	<i>Dr. S. Kumar and Others Vs. S. Ramalingam</i> reported in <i>2020 (16) SCC 553</i>
iii.	Judgment of Coordinate Bench of this Court in <i>Pravara Renewable Energy Limited Vs. Padmashri Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana</i> Commercial Arbitration Petition No.23525/2021 decided on 11.04.2022

9. By pointing out the enunciation of law as made by the Hon'ble Supreme Court of India in **Hero Vinoth (supra)** on the concept of easement by grants, he submitted that an easement of grant is a matter of contract between the parties and the parties are therefore, bound by the mandate as expressed by any recital. He also submitted that an easement by grant does not get extinguished by any easement of necessity and in the instant case, the issue of grant must be given its further effect to provide an approach way – Bullock Cart way in favour of the plaintiff. In support of these submissions, he also placed reliance on the observations recorded by the Hon'ble Supreme Court in the matter of **S. Kumar (supra)**.

By relying upon the position of law as laid down in **Pravara Renewable Energy Limited (supra)**, he submitted that the situation in the instant matter requires grant of an interlocutory mandatory injunction which is necessary to give effect to the easement by grant, as the original plaintiff is not in a position to use the approach way to approach to his agricultural land for cultivation.

10. In the backdrop of these arguments, the rival contentions fall for my consideration :-

11. The main controversy which arises in view of the rival contentions is the entitlement of original plaintiff (respondent herein) for a temporary injunction to remove the obstruction and to use bullock cart way during the pendency of the suit. It has to be noted that the suit is filed for a relief of declaration and permanent injunction claiming the right of way from the land bearing Survey No.401 belonging to the original defendant and shown as an approach way from the point 'A' to 'B' in the plaint map. The plaintiff has claimed an approach way for taking his bullock cart from the land owned by the defendant. The basis for plaintiff's relief is a recital in the Sale Deed dated 06.03.2018 (also mentioned as 06.04.2018), which mentions an approach way from the land bearing Survey No.401 in favour of Pandurang Nikam – original plaintiff. This Sale Deed was executed by Maroti Manikrao Nikam, who is brother of the original plaintiff, in favour of Amol Dhanraj Kohale, who is the original defendant. It has to be noted that in view of the controversy involved before the Trial Court, a Commissioner was appointed who has submitted a Report dated 20.11.2021, which mentions certain factual aspects.

12. Pertinent to note in the Commissioner's Report, it is mentioned that there is an approach way (pedestrian way) from the

defendant's land and no bullock cart can pass from that pedestrian way. The Commissioner has also observed in its report that there is no bullock cart way from the land belonging to Mr. Digambar Nikam, who is the brother of Pandurang Nikam (original plaintiff).

13. In order to further appreciate the controversy involved in the instant petition, the recital as found in the Sale Deed dated 06.04.2018 on the basis of which, the original plaintiff has claimed an easement of grant needs to be considered, which is stated below :-

“या शेतातून उत्तरेच्या धूराने पूर्व-पश्चिम असा पांडूरंग निकम यांचे शेतासाठी सर्वे न.४०० या शेतासाठी वहिपेरीचा वहीवाटीचा रस्ता राहीन
(मालवाहतूकीचा) (बैलबंडीचा)”

English translation of recital reads thus:-

“From this agricultural land, on the East-West boundary, there shall be an approach way for reaching land of Pandurang Nikam bearing Survey No.400.

(For Carrying Goods) “Bullock Cart Way”

Pertinent to note that this recital is mentioned by inserting a sentence in handwritten form in the typed document of the Sale Deed and the handwritten portion is counter signed by the parties to the Sale Deed.

It is crucial to note that the plaintiff's claim is based on this recital. The original defendant/ petitioner herein has taken a stand that this recital was incorporated in the Sale Deed on account of use of coercion and therefore, cannot be made the basis to conclusively determine the rights of the parties.

14. While dealing with the controversy about the entitlement for temporary injunction during the pendency of the suit, the Courts are required to consider the issues of *prima-facie* case, balance of convenience and irreparable loss. The original plaintiff has claimed a right of way from the land bearing Survey No.401 belonging to the defendant on the basis of the aforesaid recital and has thus, submitted that there exists a *prima-facie* case in his favour. He has submitted that the plaintiff is entitled for the aforesaid approach way which is the only bullock-cart approach way for going to his land and in the event, he is prevented from using the said approach way, he will be put to severe inconvenience and therefore, it is submitted that the balance of convenience lies in favour of the plaintiff. As regards, the issue of irreparable loss, it is submitted by the original plaintiff (respondent herein) that in the wake of a clear grant of easement on the basis of the recital in the Sale Deed there would be no question of any irreparable

loss to the defendant as the plaintiff is entitled to assert his right. In this regard Mr. Kapil Deshmukh, learned counsel for the respondent, on instructions, also made a statement that in-case the original defendant is required to suffer some loss on account of need to remove certain trees, the same can be compensated by the original plaintiff and has expressed readiness to compensate by paying an amount of Rs.25,000/- (Rupees Twenty-Five Thousand Only).

15. Thus, the crux of the controversy revolves around the recital mentioned in the Sale Deed which is reproduced above. It has to be noted that the contentions of the original plaintiff about this recital are controverted by original defendant, by taking a stand that the recital was mentioned on account of use of the coercion.

In this regard, it has to be noted that there is no dispute that the said recital is a part of the Sale Deed, which is a handwritten sentence and counter signed by the parties to the Sale Deed. It is not the defendant's case that the sentence was interpolated behind the back of the parties. Thus, it is clear that there is a recital which specifically records the approach way for approaching the field of "Pandurang Nikam" (original plaintiff) and even the details of the approach way are clarified by mentioning the word – bullock cart. The issue as to whether,

this recital was incorporated by using any coercion will be adjudicated on the basis of evidence to be led in the civil suit.

16. At the stage of considering the application for temporary injunction, the recital as it stands as a part of the Sale Deed will have to be taken into consideration. In the instant case the plaintiff has claimed an easementary rights based on the recital in the Sale Deed. The claim about nature of easement whether it is an easement by grant or an easement of necessity may fall for consideration in the suit. In order to understand the controversy with legal perspectives, it is necessary to refer to certain provisions of Indian Easements Act, 1882, particularly Sections 12 and 13 which are reproduced below :-

“12. Who may acquire easements.—An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created or on his behalf, by any person in possession of the same.

One of two or more co-owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the property comprised in his lease.

13. Easements of necessity and quasi easements.—Where one person transfers or bequeaths immovable property to another,—

(a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement; or

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.”

17. To delve further into the controversy which revolves around the said recital in the nature of easement of grant, it is fruitful to have a conscious look to the elucidation of law on this aspect. While dealing with the legal position about the easement by grants as against the easement by necessity, the pertinent observations of the Hon’ble

Supreme Court in the matter of **Hero Vinoth (supra)**, as reflected in following paragraphs are to be noted :-

“28. The question whether an easement is one acquired by grant (as contrasted from an easement of necessity) does not depend upon absolute necessity of it. It is the nature of the acquisition that is relevant. Many easements acquired by grant may be absolutely necessary for the enjoyment of the dominant tenement in the sense that it cannot be enjoyed at all without it. That may be the reason for the grant also. But easement of grant is a matter of contract between the parties. In the matter of grant the parties are governed by the terms of the grant and not by anything else. Easement of necessity and quasi-easement are dealt with in Section 13 of the Act. The grant may be express or even by necessary implication. In either case it will not amount to an easement of necessity under Section 13 of the Act even though it may also be an absolute necessity for the person in whose favour the grant is made. Limit of the easement acquired by grant is controlled only by the terms of the contract. If the terms of the grant restrict its user subject to any condition the parties will be governed by those conditions. Anyhow the scope of the grant could be determined by the terms of the grant between the parties alone. When there is nothing in the term of the grant in this case that it was to continue only until such time as the necessity was absolute; in fact even at the time it was granted, it was not one of necessity. If it is a permanent arrangement uncontrolled by any condition, that permanency in user must be recognised and the servient tenement will be recognised and the servient tenement will be permanently burdened with that disability. Such a right does not arise under the legal implication of Section 13 nor is it extinguished by the statutory provision under Section 41 of the Act which is applicable only to easement of necessity arising under Section 13.

29. An easement by grant does not get extinguished under Section 41 of the Act which relates to an easement of necessity. An easement of necessity is one which is not merely necessary for the reasonable enjoyment of the dominant tenement, but one where dominant tenement cannot be used at all without the easement. The burden of the servient owner in such a case is not on the basis of any concession or grant made by him for consideration or otherwise, but it is by way of a legal obligation enabling the dominant owner to use his land. It is limited to the barest necessity however inconvenient it is irrespective of the question whether a better access could be given by the servient owner or not. When an alternate access becomes available, the legal necessity of burdening the servient owner ceases and the easement of necessity by implication of law is legally withdrawn or extinguished as statutorily recognised in Section 41. Such an easement will last only as long as the absolute necessity exists. Such a legal extinction cannot apply to an acquisition by grant and Section 41 is not applicable in such case.

30. Above being the position, the High Court was right in holding that the parties clearly provided for a right of access to the backyard of the defendant's house when the partition deed was executed and shares were allotted to various sharers taking into account various factors and it is a matter of contractual arrangement between them. In such a contract if a right of way is provided to a particular sharer, it cannot be extinguished merely because such sharer has other alternative way. The High Court's reasoning and conclusions do not suffer from any infirmity to warrant interference."

18. The above mentioned exposition of law by the Hon'ble Supreme Court, if applied to the facts of the instant case, it has to be

noted that the recital in the Sale Deed appears to have created an easement in favour of the original plaintiff by providing the approach way – bullock cart way from the defendant's land. The issue as to whether this recital was incorporated in the Sale Deed by using coercion would fall for consideration during the adjudication of the suit to be decided on the basis of evidence. At the stage of considering the application for temporary injunction, in the wake of this clear recital, I am of the considered opinion that the original plaintiff is entitled for an approach way – bullock cart way from the land belonging to the defendant. It is also crucial to note that for providing the bullock cart way from his land, the defendant may be required to cut down few of his trees, which are planted on the approach way and he would suffer some financial loss on that count. Further, it is crucial to note that since the defendant was aware about this recital in the Sale Deed, it was expected of him to keep the approach way open and avoid planting any trees on the bullock cart way for enabling the original plaintiff to approach to his agricultural land. Thus, in-case the defendant is required to cut down few of his trees for providing a bullock cart way to the original plaintiff, the plaintiff is now required to compensate the actual loss for enjoying the bullock cart way from the land of the defendant. Pertinent to note

that even the plaintiff has volunteered to compensate the loss likely to be caused to the defendant, in-case some trees are required to be cut and accordingly, the defendant has not claimed any particular amount for possible loss.

19. Although learned counsel for the petitioner has placed heavy reliance on several judgments of the Hon'ble Supreme Court and Full Bench of this Court to pin point the legal position about the interference with the discretionary order, it has to be noted that there is no embargo on the powers of the Appellate Court to interfere with the discretionary order passed by the Trial Court. The Appellate Court while entertaining an Appeal under Order XLIII Rule 1 of CPC, is empowered to consider the entire material for the purposes of deciding the challenge to the discretionary order passed by the Trial Court and in-case the discretion is found to be improperly exercised is not prohibited from recording its independent findings. As such, even by considering the position of law laying down the parameters of the Appellate Court while considering the challenge to the order on temporary injunction application, an order of reversal of the Trial Court's order cannot be termed as perverse only on that count.

20. As regards the contentions of the petitioner about the discrepancy in the reliefs claimed in the plaint and the temporary injunction application with respect to the approach way from the point 'A' to 'B', it has to be noted that the approach way from the point 'A' to 'B' refers to the directions of the approach way from East to West directions and the reference to the letters from the point 'C' to 'D' also refers to the same i.e. East to West directions. Thus, the approach way from point 'A' to 'B' and from the point 'C' to 'D' both are on the same directions, however, shown at different locations on the land bearing Survey No.401 which belongs to the defendant. In this regard it is argued by petitioner that the relief claimed by temporary injunction application is beyond the relief claimed in suit and the Appellate Court has granted relief beyond scope of the temporary injunction application, however, after careful reading of plaint and the temporary injunction application, it becomes clear that there is no discrepancy. In the plaint, plaintiff has claimed an approach way from the point 'A' to 'B' and in application, he has stated that by giving effect to the recital, the defendant has earlier allowed him to use for sometime the approach way from the point 'C' to 'D' and hence, by temporary injunction, the approach way from the point 'C' to 'D' be granted. This variance to

reference points is not at all material to completely falsify the plaintiff's claim, which is based on the recital showing easement of grant.

21. While dealing with the actual controversy involved in the instant petition, being a challenge to the order of temporary injunction application, it has to be noted that in the instant case, the plaintiff has succeeded to demonstrate a *prima-facie* case in his favour based on the recital in the sale deed, which is in the nature of easement by grant. As regards the issue about balance of convenience, it has to be noted that in case temporary injunction is granted, the defendant might be put to some inconvenience since he would be required to cut down few of his trees, however, it has also to be noted that on rejection of the temporary injunction, the plaintiff would be required to suffer more inconvenience as he would be unable to approach to his agricultural field for cultivation. Thus, the balance of convenience lies in favour of the plaintiff. As regards the issue of irreparable loss, it is crucial to note that in the event of grant of temporary injunction, the defendant will be put to some loss on account of cutting of some trees, but at the same time on rejection of the temporary injunction, the plaintiff will also be put to irreparable loss as he will not be in a position to cultivate his field. As such, while considering the comparative hardships likely to be caused to

both the parties, it has to be noted that in case of refusal of temporary injunction, the plaintiff would be put to more hardship than the defendant. Thus, after considering all the relevant factors for deciding the application for temporary injunction, in the instant case, the rival claims can be balanced by directing the plaintiff to pay an amount of Rs.25,000/- (Rupees Twenty-Five Thousand Only) to the defendant towards loss on account of cutting of some trees (as volunteered by the plaintiff) and also to file an undertaking to pay additional amount, if further loss is proved by evidence. Thus, I am of the considered opinion that all the essential factors for grant of temporary injunction have been fulfilled by the plaintiff and it has become entitled for grant of temporary injunction, to operate during pendency of the suit.

It has to be noted that the temporary injunction of this nature may amount to an interlocutory mandatory injunction. However, having regard to the entire controversy, as discussed above, the same is warranted to balance the competing interests of both the parties, till the entire controversy is adjudicated on the basis of evidence in the suit. In view of the recital in the sale deed the defendant ought to have ensured to make available a bullock cart way to be provided to the plaintiff, which is not done by him and therefore, the plaintiff becomes entitled

for grant of an interlocutory mandatory injunction. As such, the reliance placed by the counsel for the respondent on the judgment of coordinate in the matter of **Pravara Renewable Energy Limited (supra)** is appropriate.

22. It is beneficial to refer here to the observations of the Full Bench of this Court in **UTO Nederland (supra)** as stated in para Nos.15 and 16, which are reproduced below :-

*“15. The aforesaid principle has been reiterated with approval by Supreme Court in **WANDER LIMITED (SUPRA)** and it has been held that need to protect the plaintiff against the injury by violation of his right for which he cannot be compensated in damages recoverable in the action if the uncertainty were to be resolved in his favour has to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights for which he would not be adequately compensated. The Court, therefore, must weigh one need against another and determine where the 'balance of convenience' lies.*

*16. The Court, while dealing with the prayer for grant of injunction is required to consider the third essential ingredient viz. irreparable injury. The Supreme Court in **M/S. GUJARAT BOTTLING CO. LTD. (SUPRA)** has held that the Court is required to satisfy itself that the party seeking injunction needs protection from the consequences of apprehended injury and the injury is such which cannot be adequately compensated by way of damages. Thus, the Court is required to satisfy*

itself that in case an injunction as prayed for is not granted, the party seeking the same will suffer irreparable injury.”

23. On careful reading of the orders passed by both the Courts below, it can be seen that although the Trial Court has exercised the discretionary powers to reject the application for temporary injunction, the Appellate Court has given due consideration to the relevant aspects and has recorded its findings to grant the temporary injunction. On perusal of the reasoning recorded by the Appellate Court which has considered the Commissioner’s Report as well as the effect of recital as contained in the Sale Deed dated 06.03.2018 (also mentioned as 06.04.2018), I do not find any perversity warranting interference under Article 227 of the Constitution of India.

24. After giving anxious consideration to the entire controversy involved in the instant petition and after careful perusal of the documents on record, I am of the considered opinion that the original plaintiff (respondent herein) is entitled for grant of temporary injunction to restrain the original defendant from creating any obstruction in the use of bullock cart way from the land bearing Survey No.401.

However, it has to be noted that the recital about the easement of grant mentions an approach way – bullock cart way from the land bearing Survey No.401 without specifying the exact locations as to whether it is from point the ‘A’ to ‘B’ or from the point ‘C’ to ‘D’ as mentioned in the plaint map and therefore, it is necessary to clarify that while providing the bullock cart way from the land bearing Survey No.401, the defendant has to decide and demarcate the approach way from his land by ensuring that minimum trees are required to be cut down. It is desirable that the plaintiff and the defendant ascertains the most convenient approach way – bullock cart way from the land bearing Survey No.401 which would require cutting of minimum number of trees. It has to be noted that while providing the bullock cart way to the original plaintiff, the defendant may be required to cut down few of the trees and therefore, the original plaintiff is required to compensate the defendant proportionately. It is also to be clarified that the issue about use of coercion while inserting the recital would be decided after adjudication of the suit. The observations recorded in the instant judgment are based on the *prima-facie* consideration of the documents including purport of the recital about the easement of grant. The Trial

Court is entitled to record its findings based on the evidence to be led by the parties in the suit.

25. In view of the above mentioned factual and legal aspects, I am of the considered opinion that no interference is warranted with the impugned order passed by the Appellate Court, allowing the application for temporary injunction in favour of the original plaintiff. The impugned judgment and order is therefore, maintained with the following modifications :-

1. The original defendant is directed to provide a bullock cart way from his land bearing Survey No.401 to the plaintiff, by providing an approach way either from points 'A' to 'B' or from points 'C' to 'D' as per the plaint map.
2. Plaintiff (respondent herein) is directed to pay to the defendant an amount of **Rs.25,000/- (Rupees Twenty-Five Thousand Only)** **within a period of four weeks** and plaintiff is also directed to submit an undertaking to pay an additional amount in-case the defendant proves by evidence in the suit that he has suffered more loss because of cutting down the trees.

26. Accordingly, the writ petition is **dismissed** by maintaining the impugned order passed by the Appellate Court with the modifications mentioned above.

27. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

1. At this stage, a request is made for continuation of the interim relief, which was operating during the pendency of the instant petition.

2. Although, the request is opposed, considering the fact that the interim relief was operating during the pendency of the instant petition, the same shall continue to operate for a period of four weeks from today.

(PRAFULLA S. KHUBALKAR, J.)

Privel