

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11058 OF 2025

1. Dnyanu Gajendra Shelke,
Age- 65 Years, Occu.: Agriculture,
2. Govind Narayan Salunkhe,
Age- 51 Years, Occu.: Agriculture,
3. Prakash Narayan Salunkhe,
Age: 59 Years, Occu.: Agriculture,
All R/at Chilaiwadi, Tal. Pandharpur,
District Solapur. Petitioners

Vs.

1. Sitaram Popat Shinde,
Age 35 Years, Occu.: Agriculture,
2. Dnyaneshwar Hari Shinde,
Age 40 Years, Occu.: Agriculture,
3. Hari Damu Deshmukh,
Age 60 Years, Occu. Agriculture,
All R/at Chilaiwadi, Tal.Pandharpur,
District Solapur. Respondents

Mr. Vaibhav Ramchandra Gaikwad, for the Petitioners.

Mr. P. B. Gujar with Mr. Prabhakar Jadhav, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 23rd SEPTEMBER 2025

PRONOUNCED ON : 25th SEPTEMBER 2025

JUDGMENT :-

1. Present Writ Petition impugns order dated 12th August 2025 passed by learned District Judge, Pandharpur in Miscellaneous Civil Appeal No.75 of 2024, thereby upholding order dated 9th September 2024 passed by learned Civil Judge, Junior Division, Pandharpur below Exhibit 5 in Regular Civil Suit No.12 of 2023, by which Application filed by Petitioners seeking temporary injunction against defendants had been rejected. (Parties are referred by original status in suit.)

2. It is contention of Petitioners/plaintiffs that they are owners of land Gat No.258/3/B, 258/2/A and 258/2/B. Respondents/defendants owned land Gat No.258/3/A, which is situated on northern side of Plaintiffs' land. Plaintiff No.2 owned land Gat No.257 situated towards western side of other lands. Defendant Nos.1 and 2 had filed application below Exhibit 5 of Mamlatdar's Courts Act, 1906 claiming that there exist south-north way abutting to Chilaiwadi to Babhulgaon road to enter their land Gat No.258/3/A, however, plaintiffs obstructed the way. Mamlatdar registered defendants' application vide Rasta Case No.S.R.-9 of 2021,

caused spot panchnama and after evaluation of material on record directed removal of obstruction in way as claimed by Respondents. Learned Sub Divisional Officer, Pandharpur confirmed order of Tahsildar.

3. In this background, plaintiffs instituted Regular Civil Suit No.12 of 2023 before Civil Judge Junior Division at Pandharpur alongwith application below Exhibit 5 thereby claiming relief of temporary injunction. However, said application came to be rejected. Petitioners filed Miscellaneous Civil Appeal No.75 of 2024 before learned District Judge at Pandharpur, who rejected Petitioners' appeal thereby upholding order passed by trial Court.

4. Mr. Vaibhav Gaikwad, learned Advocate appearing for Petitioners would submit that order passed by Competent Authority under Mamlatdar's Courts Act, 1906 is perverse and based on no evidence as to existence of way, as claimed by Respondents, to approach their land. By inviting attention to spot panchnama dated 8th December 2021 made by Tahsildar, he would submit that existence of way, as claimed by Respondents, cannot be ascertained from contents of panchnama. Unfortunately, learned Tahsildar

misinterpreted contents of panchnama and recorded findings as to existence of customary way and accepted case of Respondents about obstruction at the hands of Petitioners.

5. Mr. Vaibhav Gaikwad would further submit that Petitioners undertake to make available 12 to 13 feet road from Gat No.257 to Respondents to approach their land Gat No.258/3/A. He would further urge that Respondents can easily approach to their land from Gat No.257. Both Courts have refused to grant temporary injunction to Petitioners observing that although Plaintiffs have submitted that defendant Nos.1 and 2 have access through Gat No.259 from northern side canal road, there is no such material to show that defendants have such type of access. However, now Petitioners have filed undertaking to provide such access.

6. Mr. P. B. Gujar, learned counsel appearing for Respondents vehemently opposed contention of Petitioners. He would submit that Petitioner No.2-Govind Narayan Salunkhe has already tendered his written consent to provide wider road from west side bandh. He would further submit that access road, as claimed by Respondents, can be seen from Block Map and Village Map. Competent Authority under Mamlatdar's Courts Act, 1906 have concluded about pre-

existing way and passed order injuncting Petitioners from obstructing approach to Gat No.258/3/A from western band of Gat Nos.258/3/B, 258/2/A, 258/2/B and 258/1 from western side which passes through Chilaiwadi-Mendhapur Road (Wani Road).

7. Having considered submissions advanced by learned Advocate appearing for respective parties, it can be observed that Competent Authorities under Mamlatdar's Courts Act, 1906 have accepted case of Respondents regarding existence of approach way and its use by Respondents. Eventually, injunction is granted against Petitioners with further directions to remove obstruction created by them. The order passed by Mamlatdar in exercise of jurisdiction under Section 5 of the Mamlatdar's Courts Act, 1906 is confirmed by learned Sub Divisional Officer in Revision filed by Petitioners. Apparently, orders passed under Mamlatdar's Courts Act, 1906 has attained finality.

8. Petitioners have instituted Regular Civil Suit No.12 of 2023 before Civil Judge Senior Division at Pandharpur seeking relief of declaration and injunction against defendants and claimed to declare orders passed by Competent Authority under Mamlatdar's Courts Act, 1906 as null and void and unexecutable and sought relief of perpetual injunction to not to use said way in pursuance of order

passed by Competent Authority. Plaintiffs filed application below Exhibit 5 for temporary injunction in the suit. Trial Court observed that controversy between parties is in relation to existence of customary way, which have been approved by Competent Authority. It is observed that Gat Map produced by Respondents shows that there are marks of way towards western portion of lat Gat No.258 which runs south north. Further adjacent to line of way, there is boundary line of Gat Nos.257 and 258. Resultantly, trial Court observed that plaintiffs failed to establish that way, mentioned in the order passed by Tahsildar, is not in existence. In the appeal filed by Petitioner, learned District Judge observed that there was existence of way in south-north directions between Gat No.257 and 258 to proceed further towards northern side. Eventually, refused to grant injunction as prayed.

9. Apparently, Competent Authority under Mamlatdar's Courts Act, 1906 as well as both the Courts have recorded *prima facie* finding about existence of suit way. Respondents were successful before Competent Authority under Mamaltadar's Court Act, 1906 to establish their case about pre-existing way. The order passed by Mamlatdar has attained finality. It is true that Civil Court can rule

upon order passed by Competent Authority. However, unless perversity or patent illegality is shown in order passed by Competent Authority, even Civil Court would be slow in entertaining prayer for grant of temporary injunction.

10. Petitioners/plaintiffs will have to establish their case by leading sufficient evidence and demonstrate that finding recorded by Authorities under Mamlatdar's Courts Act, 1906 is based on no evidence or the finding as to existence of customary way claimed by Respondent is perverse or Competent Authority failed to exercise jurisdiction in judicious manner within parameters of law.

11. In that view of the matter, only because Petitioners/plaintiffs have offered to provide access way to the Respondents, there is no reason to interfere in the well reasoned order passed by Courts below. No jurisdictional error is brought to notice of this Court to exercise extraordinary powers under Article 227 of Constitution of India.

12. In result, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR, J.)