

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7545 of 2015

Limbaji Namdeo Kakad,
Age- 56 years, Occu- Agril.,
R/o Akola (Nikalak) Tq. Badanapur,
Dist. Jalna.

...PETITIONER
(Ori. Defendant)

VERSUS

Burakhabee W/o Mirza Bashir Baig,
Age-51 years, Occu. Agriculture,
R/o Ramkheda, Tq. Badnapur,
Dist. Jalna.

...RESPONDENT
(Ori. Plaintiff)

Mrs. Pooja V. Langhe, Advocate for the petitioner.
Mr. B.R. Kedar, Advocate for the respondent.

CORAM : SUNIL P DESHMUKH, J.

DATE : 26th AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. Petitioner is original defendant in Regular Civil Suit No. 126 of 2012 pending before Civil Judge, Junior Division, Badanapur, District Jalna, filed by present respondent - original plaintiff seeking permanent and mandatory injunction in respect of property described therein including cart-way on the eastern side of the suit land situated at village Ramkheda, in taluqa Badanpur. Parties are hereinafter referred to by their original status in the suit.

3. Plaintiff instituted the suit contending that the defendant is causing obstruction to her possession over the suit land contending existence of cart-way (road) having width of 10 feet on eastern side of suit land. The plaintiff along with plaint has also filed application Exhibit-5 seeking temporary injunction. The defendant appeared and application Exhibit-5 has been considered by the trial court elaborately and had referred to that plaintiff has satisfied three ingredients required for granting temporary injunction viz; *prima facie* case, balance of convenience and irreparable loss.

4. The trial court has considered that Gut No. 1 in Ramkheda is considerably a huge tract of land in possession of several persons. From said Gut number, about 1 *Hectare* and 57 *Aar* land belongs to the plaintiff. The plaintiff had purchased the land from one Bapurao Amarsing Ambhore and Namdeo Tejrao Ambhore. Subsequently, in 1994 Namdeo Tejrao Ambore had also executed consent-deed in respect of user of 10 feet road on the eastern side to the suit land. Said consent-deed had been considered while sanctioning mutation entry No. 542 in the revenue record. So is the case in respect of 7/12 extracts indicating that there is existence of road on the eastern side of the suit land and said entry continued from for over 18-19 years. The plaintiff alleged that before institution of the suit, defendant was causing obstruction to her right to suit land as well as to cart-way (road), and thus cause of action had arisen for institution of the suit.

5. Defendant appeared and filed his written statement and say and contended that he purchased the lands in 1988 and 1991. It is contended that in none of the sale-deeds there is reference of the road as has been alleged by the plaintiff. The plaintiff has various alternate ways available for ingress and egress to land owned by her. As such, attempt of the plaintiff to create road for access to her land shall be declined and injunction ought to be refused. The defendant also contended that Namdeo Ambhore had parted with land sold to the plaintiff around March/April 1994 and consent deed appears to have executed by Namdeo Ambore in November 1994 and subsequent to that mutation entry has been sanctioned. It is contended that such consent-deed could not be considered while sanctioning mutation entry since Namdeo Ambhore had not at all been owner and had no authority to execute consent-deed.

6. It appears that the trial court has considered all these contentions of the plaintiff as well as the defendant and has also considered the revenue record in respect of road. Affidavit of adjoining land holder is filed supporting the case of the plaintiff in respect of existence of road. It also considered that alternate way suggested by defendant would not diminish, *prima facie* existence of the road depicted on record. The appellate court endorsed the findings of the trial court and, as such dismissed, the appeal filed by the appellant against grant of temporary injunction by the trial court.

7. It is contended by learned counsel appearing for petitioner-defendant that on the face of record, it depicts that Namdeo Ambhore had no right to execute consent-deed, as such, it ought to have considered that mutation entry bearing No. 542 has no significance and revenue record in respect of road and its continuation has hardly any effect on the rights of the parties. Mutation entries are for fiscal purpose and cannot be said to be evidence on facts. It is submitted that the petitioner had purchased the land long before. It is contended that plaintiff has several alternate ways for ingress and egress to her land and alleged road is not necessary.

8. Mr. Kedar, learned counsel appearing for plaintiff submits that there is sufficient material produced by the plaintiff before the court depicting existence of road. It is not the case that road is created by virtue of mutation entry No. 542. There is sufficient record about existence of road even prior to mutation entry No. 542. He further goes on to submit that alternate way available is not the case being pleaded by the plaintiff. It is her right to have way which has been existing that is subject-matter of dispute along with suit land. He submits that having regard to material on record, the orders passed by the courts below cannot be termed to be perverse at this stage. *Prima facie* there are long standing revenue entries coupled with consent-letter by erstwhile owner and the concerned persons appear to have acquiesced in consent. Affidavit of adjoining land holder indicates that there is a road. Upon such

strong *prima facie* case, the orders do not deserve to be interfered with.

9. On perusal of the impugned order, it appears that courts had considered relevant material including and the revenue record depicting existence of road all along even hitherto. It is further considered that contention of the defendant about vendor Namdeo Ambhore would not be having any right to execute consent-deed is not relevant at this stage and would be a matter to be considered while adjudicating the suit on evidence. Having regard to aforesaid consideration, the material considered at this stage appears to be relevant. No perversity can be found in the orders. There does not appear to be jurisdictional error. Writ petition, as such, stands dismissed. Rule stands discharged.

10. Having regard to the nature of the dispute, learned counsel for the petitioner requests to direct the trial court to dispose of the suit as early as possible. Accordingly, trial court may dispose of the suit as expeditiously as possible, preferably within a period of eight months from the date of receipt of writ of this order. The suit would be decided on its own merits without getting influenced by any of the observations in this judgment and order.

Sd/-

(SUNIL P DESHMUKH, J.)