

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

WRIT PETITION NO. 3145 OF 2015

Balaso Bhupal Terdale and Ors

..Petitioners

Vs

Devgonda Shivgonda Patil and
Ors.

.. Respondents

Mr. Surel S. Shah, Advocate for Petitioners.

Mr. Rahul S. Kulkarni, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 03/12/2015

PC:

1. Heard Mr. Surel Shah, learned counsel for the petitioners and Mr. Rahul Kulkarni, learned counsel for respondent no.1 at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 13.5.2014 passed by the learned Civil Judge, Jr. Dn. Jaysinghpur, below Exhibit 5 in Regular Civil Suit No. 180 of 2013 as also the judgment and order dated 12.2.2015 passed by the learned District Judge-1, Jaysingpur in Misc. Civil Appeal No. 33 of 2014. By these orders, the Courts below issued injunction restraining the defendants from causing obstruction to the plaintiff's possession over 6 feet in the property of the plaintiff in pursuance of decision dated 12.7.2013 passed by Tahasildar.

3. Mr. Shah submitted that respondent no.1, hereinafter referred to as 'plaintiff', has challenged order of Tahasildar Hatkanangale dated 12.1.2013. He has, however, not prayed for stay of that order. The plaintiff has sought injunction restraining the defendants from obstructing his possession in respect of 6 feet of his property. In the first place, the plaintiff is not in possession of the six feet. Secondly except the plaintiff, other co-owners are not objecting to user of road as suggested by Tahasildar's order dated 12.7.2013. In fact, in pursuance of the order dated 12.7.2013, the defendants have laid road and are using the road. The learned trial Judge has not issued injunction restraining the defendants from laying road in the plaintiff's area. Injunction issued is only restraining the defendants from causing obstruction to the use of the plaintiff in respect of 6 feet coming under the road. The said relief is infructuous as the road is already laid. He has also invited my attention to the map to contend that the road is passing through Gat Nos 324 to 410 since long.

4. On the other hand, Mr. Kulkarni supported the impugned orders. He submitted that basically the order passed by the Tahasildar on 12.7.2013 is illegal. In exercise of powers under section 143 of the Maharashtra Land Revenue Code, 1966 (for short, "Code"), the Tahasildar is empowered to inquire into and

decide claims by persons holding land in a survey number **to a right of way over the boundaries of other survey numbers.** He submitted that the Tahasildar can only consider claims raised by persons for a right of way over the boundaries. In exercise of that power, the Tahasildar cannot permit persons to use land of other persons. In the present case, the Tahasildar has given 6 feet right of way through the plaintiff's property which is contrary to Section 143(1). Apart from that, he submitted that the Courts below, after considering the material on record, have issued injunction and, therefore, no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below, after going through the material on record as also Section 143 of the Code, have issued injunction restraining the defendants from causing obstruction of the plaintiff's user of 6 feet in his property.

6. In paragraphs 13 and 15, the learned trial Judge observed that under section 143 the Tahasildar has power to decide claims of persons to a right of way over boundaries of other survey numbers. However, the Tahasildar has no power to prescribe road in a private property without acquisition. It was further

observed that as against this, the Tahasildar has prescribed 6 feet wide road through the plaintiff's property. The Tahasildar has no power to prescribe such road without acquiring the property. In paragraph 17, the learned trial Judge also observed that in the field of the plaintiff, there was standing sugarcane crop. In paragraph 18, it was observed that the Tahasildar has prescribed 12 feet road from southern bandh of Gat No.400 and northern bandh of Gat no.408 but actually 16 feet wide road is in existence. Thus, the act of the defendants is in contravention of the order of Tahasildar.

7. The learned District Judge in paragraph 7 has observed that immediately after passing of order on 12.7.2013, the defendants suo-motu prepared the road. Photographs produced on record show that sugarcane crop of the plaintiff was removed. From perusal of the photographs, it clearly indicates that more than excess area of the land is used for road purpose. The learned District Judge also after perusing Commissioner's report at Exhibit 47 observed that at some places 16 feet in width road is pointed out which also indicates that excess portion of the plaintiff's property was acquired on the strength of the order of the Tahasildar. The learned District Judge, therefore, held that the defendants have taken undue advantage of the order of the Tahasildar.

8. Mr. Shah relied upon a decision of this Court in the case of Keshav Vithoba Khatdeo Vs. Gopal Sakharam Mundare, 2014 (3) Mh.L.J. 612 to contend that the job of finding out right of way or removal of obstruction from the existing right of way or for inquiring into and deciding the claims for right of way over the boundaries of other survey numbers is an expert job and civil court may not be equipped with such an expertise. There is no dispute with this proposition. However, the moot question is whether the Tahasildar has exceeded powers under section 143(1) of the Code and whether the defendants have in contravention of Tahasildar's order have laid road. The Courts below, prima facie, have held in favour of the plaintiffs. The decision relied by Mr shah, therefore does not advance case of the defendants.

9. In view thereof, I do not find that the Courts below have committed any error in issuing the injunction. Hence, Petition fails and the same is dismissed. It is expressly made clear that the observations made herein are tentative and, prima facie, and are made only for the purpose of considering correctness of the impugned order. The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits in accordance with law uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

10. At this stage, Mr. Shah orally applies for continuation of the order dated 25.3.2015 passed by this Court for a period of six weeks from today. Having regard to conduct of the defendants as also the findings recorded by the Courts below, it is not possible to accept the request made by Mr. Shah. Hence, oral request is rejected.

(R.G.KETKAR, J.)