

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

WRIT PETITION NO.6055 OF 2014

Master Shivraj Tatyasaheb Dhadambe

and another

.. Petitioners

Versus

Shri. Ramchandra Sopan Thorat and others

.. Respondents

Mr. R. S. Kate, Advocate for the Petitioners.

Mr. V. S. Talkute, Advocate for Respondents No.1 to 3.

CORAM : R.M. SAVANT, J.

DATE : 20th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 10th June, 2014 passed by the Learned District Judge-I, Malshiras, by which order the Appeal filed by the Respondents No.1 to 3 herein came to be allowed and resultantly, the order dated 18.07.2012 passed by the Trial Court i.e. Learned Civil Judge, Junior Division, Malshiras allowing the application Exh.5 for temporary injunction came to be set aside and in turn, the application Exh.5 came to be dismissed. The suit in question i.e. Regular Civil Suit No.885 of 2010 has been filed by the Petitioners herein challenging the order dated 30th November, 2009 passed by the Tahsildar, Malshiras, by which order the application filed by the Respondents No.1 to

3 under Section 143 of the M.L.R.C. came to be allowed and the Tahsildar granted the road through the lands which are mentioned in the operative part of the said order for the Respondents No.1 to 3 herein to approach the Nirningaon Kondbavi- Kondbavi Road. In the said suit, the Respondents No.1 to 3 herein have sought a declaration that the said order is not binding upon the Plaintiffs. The Plaintiffs have also sought an injunction that in the guise of the said order of the Tahsildar, the Defendants be enjoined from entering the property of the Petitioners i.e. the original Plaintiffs. In the said suit, the Plaintiffs filed an application for temporary injunction, suffice it to say that the Trial Court allowed the said application on the ground that the Defendants have an alternate way being South North way connecting the Akluj-Chakore Road. The Trial Court further observed that prima-facie the road granted by the Tahsildar was never in existence. The Trial Court therefore, by its order dated 18.07.2012 allowed the said application Exh.5.

2. The Defendants i.e. Respondents No.1 to 3 herein challenged the said order by way of Misc. Civil Appeal No.31 of 2012. The Lower Appellate Court allowed the said Appeal. The gist of the reasoning of the Lower Appellate Court was that if the Defendants are allowed right of way over the northern side Dhura (boundaries of Gat No.161) so as to enable to approach from their field, no harm, prejudice or loss is going to be

caused to the Plaintiffs. On the other hand, if the said access way over the Dhura or boundary is not given to the appellants, then they would be deprived from enjoying their property. The Lower Appellate Court observed that if the Plaintiffs have not kept any Dhura or boundary on the northern side of their land or if they have already brought the northern side Dhura or boundary under cultivation then, it is natural that the alleged access way to the Appellants will pass through the land for which the Plaintiffs cannot blame the Defendants. The Lower Appellate Court observed that since every land owner has to keep a particular width of Dhura or boundary around the land, if the Plaintiffs have not kept the Dhura or boundary, then for the damage that would be caused to them while creating access way to the appellants through the northern Dhura of Gat No.161, they would be responsible. The Lower Appellate court held that the Trial Court has allowed the said application Exh.5 without considering the aforesaid aspects. The Lower Appellate Court was therefore, of the view that the order passed by the Trial Court is required to be interfered with. The Lower Appellate Court accordingly set aside the order passed by the Trial Court and thereby vacated the injunction and dismissed the application Exh.5. As indicated herein above, it is the said order dated 10th June, 2014, which is taken exception to by way of the above Petition.

3. The above Petition was argued at some length on an earlier occasion, when the same was adjourned so as to enable the parties to take instructions as regards the status of the land of the Defendants as also to ascertain the boundary, in so far as the Plaintiffs are concerned. The learned counsel appearing for the Respondents No.1 to 3 Mr. V. S. Talkute states that right from the year 2006, the entry in the cultivation column is to the effect that the land is fallow and that there are Babhul trees, meaning thereby that the land of the Defendants has not been cultivated. The learned counsel for the Defendants sought to attribute the same to be factum of their being no way to the Defendants to approach their land from the main road except through the lands of the Petitioners herein i.e. original Plaintiffs. Faced with the revenue extracts in respect of cultivation from the year 2006, the learned counsel appearing on behalf of the Petitioners herein Shri. R. S. Kate does not dispute the said documents at least at this prima-facie stage. In my view, since it appears that the Respondents No.1 to 3 herein have prima-facie no other way, except the way granted by the Tahsildar by his order dated 18th November, 2009 and since the Lower Appellate has deemed it appropriate to set aside the order passed by the Trial Court on the said basis. In my view, no interference is called for in the impugned order. However, it is clarified that as directed by the Tahsildar the new way would be of the width through which a

conventional Bullock Cart would pass. With the aforesaid directions, the Writ Petition is dismissed. In the facts and circumstances of the case, where the suit is of year 2010, the hearing of the suit is expedited. Needless to state that the suit would be tried on its own merits and in accordance with law uninfluenced by the instant order or the impugned order.

[R.M. SAVANT, J]