

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

CIVIL REVISION APPLICATION NO.421 OF 2014

Vitthal Shankar Walawalkar and others

.. Applicants

Versus

Prabhakar L. Dalvi and others

.. Respondents

Mr. Mahesh V. Rawool, for the Applicants

CORAM : R.M. SAVANT, J.

DATE : 09th FEBRUARY, 2015

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the order dated 04.04.2014 passed by the Learned Civil Judge, Junior Division, Sawantwadi, by which order the applications Exhs.35, 36, 49 and 50 came to be rejected. The said applications were filed by the various Defendants to the suit in question. In so far as the application Exh.35 is concerned, the framing of preliminary issue as regards the jurisdiction of the Trial Court was sought. In so far as Exh.36 and Exh.50 are concerned, two sets of Defendants allege that though ex-parte injunction has been obtained by the Plaintiff, the Plaintiff has not complied with Order 39, Rule 3 of the CPC in the matter of furnishing copies to the Defendants. In so far as Exh.49 is concerned, the Defendants had questioned the maintainability of the suit on the ground that the Plaintiff had no cause of

action for filing the instant suit.

2. The suit in question has been filed for a declaration and injunction. The declaration was sought that the Defendants No.1 to 6 have no right to carve out a road from the property of the Plaintiff and injunction is sought that the Defendants No.1 to 6 should not carve out any road otherwise by themselves or anybody else in the suit property. It seems that the proceedings under the Mamletdars Court's Act, 1908 were adopted by the Defendants in respect of the alleged obstruction on the road in question. The said proceedings culminated in the Mamletdar directing the said obstruction to be removed. It seems that the matter was not carried further in Appeal.

3. The foundation for the instant suit is that the Defendants behind the back of the Plaintiff with the help of Defendants No.1 and 2 have got entered in the Register of the Grampanchayat bearing No.26 the existence of 200 meter road from Dalviwadi to Bramhapurwadi, though no such road was in existence. It is the case of the Plaintiff that the said knowledge was acquired by the Plaintiff on 21.01.2014 and it is on the basis of the said entry made in the Register bearing No.26 that the Defendants are seeking to carve out a road from the suit property. It is further the case of the Plaintiff that the alleged resolution passed by the

Grampanchayat in the year 2004-2005, however the same was passed without obtaining the consent of the Plaintiff's or his relations. The cause for filing the suit was mentioned in paragraphs 6 and 7 of the plaint. The Trial Court having regard to the averments made in the said paragraphs held that it could not be said that the Plaintiff did not have cause of action for filing the suit. In so far as the objection regarding maintainability of the suit and order passed by the Tahsildar under the Mamletdars Court's Act is concerned, in my view, it is well settled that the proceedings before the Mamletdar or Tahsildar are summary proceedings and the power under Section 5 of the said provisions can be invoked, if there is an obstruction which is created. However, whether there was a road or not can only be decided in Civil proceedings and hence, the said objection has been rightly turned down by the Trial Court. In so far as the applications Exh.36 and 50 is concerned, which is the alleged non-compliance of Order 39 Rule 3 by the Plaintiff after obtaining the ex-parte injunction, the Trial Court has on the basis of the record, recorded a finding that the Plaintiff in fact has complied with the said provision. Hence, the order passed by the Trial Court in respect of all the four applications cannot be found fault with. Hence, no case for exercise of the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]