

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

WRIT PETITION STAMP NO.19189 OF 2015

Suresh Subrao Gaikwad : Petitioner
versus
Kisan Deu Jagtap and ors. : Respondents.

Mr. S T Bhosale for the Petitioner.
Ms. M S Bane, "B" Panel Counsel for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT, J.
DATE : 27th July 2015

P.C.

1 There is concurrent findings recorded against the Petitioner and in favour of the Respondent No.1 as regards existence of the road running East to West on the bund of Survey No.172/3.

2 Both the Tahsildar exercising powers under Section 5 of the Mamaltdar Court's Act and the Sub Divisional Officer exercising powers under Section 23 of the said Act have concurrently held that there was an existing road which the Petitioner has obstructed by putting thorns of Babool Tree on the said road.

3 The learned counsel for the Petitioner would contend that by the decree passed in Regular Civil Suit No.243 of 2000 the road has been provided to the Respondent No.1. The said contention has been dealt with by the

Additional Collector by observing that the Respondent No.1 was not a party to the said proceedings. However, the learned counsel for the Petitioner states that the Respondent No.1 was in fact the party to the said proceeding. Even assuming it be so, the said fact in my view would not impact the claim of the Respondent No.1 in so far as obstruction to the road in question is concerned. It is well settled that the proceedings under Section 5 of the said Act are of summary nature and the authorities below exercising powers under the said Act are only required to see whether there was a road in existence and the same has been obstructed. In the instant case, as indicated above, both the authorities below have reached a conclusion that the road is in existence and the same is obstructed by the Petitioner. It is also required to be noted that the Petitioner has filed his own suit being Regular Civil Suit No.240 of 2015 wherein he has sought injunction for restraining the Respondent No.1 herein from using the road in question to access his property. In view of the suit that has been filed by the Petitioner the user of the said road by the Respondent No.1 would obviously be subject to the result of the said suit. Hence no case for interference in the writ jurisdiction of this Court is made out. Subject to what has been stated herein above, the above Writ Petition is dismissed.

[R.M.SAVANT, J]