

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

WRIT PETITION NO.10192 OF 2014

Laxman Shripati Bhosale and ors. : Petitioners
versus
The Sub Divisional Officer, Madha Divisional
Kurduwadi and ors. : Respondents.

Mr. Dilip Bodake for the Petitioners.
Mrs. V S Nimbalkar AGP for the Respondent Nos.1 and 2.
Mr. Kisan B Sonwalkar for the Respondent No.3.

CORAM : R. M. SAVANT, J.
DATE : 14th July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 22/9/2014 passed by the Sub Divisional Officer, Madha Division, Kurduwadi, Dist. Solapur by which order the Revision Application filed by the Respondent No.3 herein came to be allowed and resultantly the order dated 21/11/2012 passed by the Tahsildar came to be set aside and in turn the Application being Rasta Case No.18/2012 came to be allowed.

2 The Petitioners herein and the Respondent No.3 are cousins and pursuant to partition which took place between the family members, the lands of the family amongst which is Gat No.277 was partitioned on account of which the said Gat No.277 was subdivided into various parts. The Respondent No.3 herein on the ground that the Petitioners herein were obstructing his

access to his land bearing Gat No.277/11 to access it from Malegaon Tembhurni Road by the bund on Gat Nos. 277/12 and 277/10 had filed an Application invoking Section 5 of the Mamlatdar Court's Act 1908 (for short "the said Act"). It was the case of the Respondent No.3 that to access his land, the road as mentioned herein before was the only road available to him. The said case of the Respondent No.,3 was denied by the Petitioners herein who were arrayed as Opponents in the said proceedings. To ascertain the situation on site, the Tahsildar caused a site inspection, and pursuant to the said inspection prepared a panchanama which is dated 19/10/2012. In the said panchanama he observed that the bund has width of about 10 ft, however, there is existence of grass which is about 1 ft in height and there are 7 Nilgiri trees on the boundary of the said bund. The Tahsildar thereafter proceeded to consider the said application and on the ground that there is no customary way proved by the Applicant/Respondent No.3 as also on the ground that though the width of the road depicts that bullock cart and tractor can traverse, however, the road does not show any sign of it being used in the said manner. The Tahsildar again reiterated that there is a grass of about 1 ft on the said bund and by so observing rejected the Application by his order dated 21/11/2012.

3 The Respondent No.3 herein carried the matter by way of a Revision under Section 23 of the said Act before the Revisionary Authority.

The said Revision was heard by the Sub Divisional Officer, Madha Division, Kurduwadi, Dist. Solapur. The Sub Divisional Officer has allowed the Revision filed by the Respondent No.3 by the impugned order and resultantly set aside the order passed by Tahsildar dated 21/11/2012. The gist of the reasoning of the Sub Divisional Officer was that from the report prepared by the Tahsildar it becomes clear that there is existence of 10 ft road. The Sub Divisional Officer has thereafter referred to the affidavit of one Raju Mahadev Bhosale in support of the fact that there was an existing road on the bund. The Sub Divisional Officer has also adverted to the fact that the partition has taken place between the parties and that to access Gat No.277/11, the said 10 ft. wide bund was kept. The Sub Divisional Officer has accordingly as indicated above allowed the said Revision Application by the impugned order dated 22/9/2014.

4 It appears that the Petitioners herein have filed Regular Civil Suit No.404 of 2012 seeking an injunction against the Respondent No.3 to restrain the Respondent No.3 from creating a new road to access Gat No.277/11 from the suit properties mentioned in Paragraph 1A and 1B. It appears that in the said suit the Respondent No.3 herein has filed a counter claim claiming the road.

5 It is well settled that the rights of the parties can only be settled by a decree of the Civil Court. It is also required to be noted that the provisions of

Section 5 of the said Act can only be invoked where there is an obstruction and the removal of the said obstruction is sought. In my view, therefore, though the Sub Divisional Officer has allowed the Revision Application filed by the Respondent No.3 herein, the rights of the parties can only be adjudicated in the suit filed by the Petitioners herein in which the Respondent No.3 has filed a counter claim. Hence the order passed by the Sub Divisional Officer allowing the Revision Application would have to be made subject to the result of the said civil proceedings. With the aforesaid observations the Writ Petition is disposed of. Needless to state that the Regular Civil Suit No.404 of 2012 would be tried on its own merits and in accordance with law uninfluenced by the order passed by the Sub Divisional Officer, Madha Division, Kurduwadi, Dist. Solapur as also by the instant order.

[R.M.SAVANT, J]