

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Appeal from Order No. 108 of 2015

- 1) Ahilaji Suryabhan Shelke,
Age 62 years,
Occupation : Agriculture.
- 2) Trimbak Kondaji Warule
Age 70 years,
Occupation : Agriculture.
- 3) Kailas Vasant Warule,
Age 48 years,
Occupation : Agriculture.
- 4) Sushila Vasant Warule,
Age 60 years,
Occupation : Agriculture.
- 5) Mina Vasant Warule,
Age 55 years,
Occupation: Agriculture.

All R/o Shirdi, Taluka Rahata,
District Ahmednagar.

- 6) Sunita Vasant Warule,
Age 32 years,
Occupation: Agriculture.
R/o Shivajinagar, Pune.
- 7) Usha Prabhakar Jagtap
Age 52 years,
Occupation: Agriculture.
R/o Shirdi, Taluka Rahata,
District Ahmednagar.
- 8) Savita Bharat Dudhe
Age 34 years, Occu: Agriculture,
R/o Taklimiya, Taluka Rahuri,
District Ahmednagar.

.. Appellants.

Versus

- 1) The Collector, Ahmednagar.
- 2) The District Superintendent of Land Record, DILR Office, Aurangabad Road, Ahmednagar.
- 3) The Taluka Inspector of Land Record, Rahata, District Ahmednagar.
- 4) The Taluka Inspect of land Record, Kopargaon, District Ahmednagar.
- 5) The Chief Officer, Nagar Panchayat Shirdi, District Ahmednagar.
- 6) The Assistant Director of Town Planning, Ahmednagar.
- 7) Eknath s/o Hanumant Shelke, Age 70 years, Occu: Agriculture.
- 8) Ramrao Thamaji Shelke, Deceased through legal representatives:
- 8A) Draupadabai Ramrao Shelke, Age 74 years, Occupation: Agriculture.
- 8B) Shivaji s/o. Ramrao Shelke, Age 54 years, Occupation: Advocate. Both R/o Purwadnagar, Ward No.7, Shrirampur, District Ahmednagar.

- 8C) Rajendra Ramrao Shelke,
Age 50 years,
Occupation: Service,
R/o. Sanjivani Sahakari Sakhar
Karkhana, Kopargaon,
District Ahmednagar.
- 8D) Indra w/o. Annasaheb Narwade,
Age 50 years,
Occupation: Household,
R/o Shirdi, Taluka Rahata,
District Ahmednagar.
- 8E) Mandabai w/o. Nanasaheb Chandgude,
Age 42 years,
Occupation: Household,
R/o Kopargaon,
District Ahmednagar.
- 8F) Chandrika Jayendra Borse,
Age 40 years,
Occupation : Household,
R/o Shirdi, Taluka Rahata,
District Ahmednagar.
- 8G) Pushawati w/o. Pratap Lahane,
Age 42 years,
Occupation: Agriculture,
R/o Waki, Taluka Rahata,
District Ahmednagar.
- 8H) Surekha Balasaheb Kothawale,
Age 44 years,
Occupation: Household,
- 8-I) Sanjay Ramrao Shelke,
Age 45 years, Occu: Agriculture.
- 9) Rangnath Thamaji Shelke,
Age 75 years, Occu: Agriculture,
All R/o Shirdi, Taluka Rahata,
District Ahmednagar.
- .. Respondents.**
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Shri. V.S. Bedre, Advocate, for appellants.

Shri. A.R. Borulkar, Assistant Government Pleader, for respondent Nos.1 to 4 and 6.

Shri. S.S. Chapalgaonkar, Advocate, for respondent No.5.

Shri. Rahul R. Karpe, Advocate, for respondent Nos.8-A to 8-I and 9.

CORAM: T.V. NALAWADE, J.

DATE : 8th FEBRUARY 2016

JUDGMENT:

1) The appeal is admitted. Notice after admission made returnable forthwith. Heard both sides by consent for final disposal.

2) Present appeal is filed to challenge the order made on Exhibit 7 in Regular Civil Appeal No.8 of 2013 which is pending before District Judge Kopergaon, District Ahmednagar. The application was filed in appeal to prevent the respondents, defendants from making construction over the disputed portion. The application is rejected by the District Court.

3) Regular Civil Suit No.82 of 2009 was filed by present appellants in respect of some open space situated on eastern side of their properties bearing CTS No.185/B and CTS No.193. The properties are situated within limits of Nagar Panchayat Shirdi. It is the case of the appellants that said open space is being used by the plaintiffs and others as open space and way for approaching public road after leaving the aforesaid properties. It is contended that the defendant Nos.7 to 9 have joined hands with officers of city survey office and they are trying to grab the open space by creating separate property card in respect of open space. It is contended that the dispute is pending before the revenue authorities with regard to the entry made of the names of the defendants. In the city survey record that property was not shown as the property of the defendants. Relief of declaration was sought in respect of this portion and relief of injunction was also claimed.

4) The defendants contested the suit by contending that the open space belongs to them and the revenue authorities had given decision in their favour in that regard. At the relevant time, there was record of city

survey office created in favour of the defendants in respect of the suit property and on the basis of that circumstance the civil Court dismissed the suit.

4) It appears that the orders made by the revenue authorities, city survey office were challenged before the appellate authority by present appellants and the appellate authority has cancelled the previous decisions made in favour of the defendants by which CTS No.1134 was created and this number was given to the disputed open space. This decision in appeal was given on 24-6-2013. This decision was placed before the District Court but the District Court has not considered the said decision. During pendency of suit there was relief of temporary injunction.

5) This Court has gone through the order made by the revenue authorities and also map prepared by city survey office of the properties of the plaintiff, adjoining properties and of the disputed property. The map shows that to the eastern side of the property of plaintiff, there is open space and door of house opens to this space and

then to north side there is public road. On three sides of the open space there are properties of different persons including that of the defendants and the open space was not included in the property of any of such persons. It is not disputed that in the past, during city survey, no number was given to the open space and due to recent decision of the appellate authority the entry made in favour of the defendants is cancelled. When there is dispute of such nature the Courts are expected to take care as such open space belongs to Government or the local body and the adjacent owners are generally interested in grabbing such property. The suit was filed by the present appellants for relief of declaration and there is dispute of aforesaid nature with regard to the suit property. In view of the recent decision given by the appellate authority, not much weight can be given if at all the local body has granted construction permission in favour of the plaintiff. In respect of the suit property, this Court has no hesitation to observe that the parties need to maintain status quo and the property needs to be kept as it is till final decision of the aforesaid dispute. In the result, following order is passed:

6) The appeal is allowed. The order made by the learned District Judge-1 Kopargaon on Exhibit 7 in Regular Civil Appeal No.8 of 2013 is hereby set aside. The application filed for interim relief to prevent the construction on disputed space is allowed.

Sd/-
(T.V. NALAWADE, J.)

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