

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2566 OF 2016

Vasant Dhondiba Karande & Ors .. Petitioners
vs.
Dattatraya Ramchandra Mali & Ors .. Respondents

Mr. Ajay A. Joshi for Petitioners.
Mr. Amit Kumar Sale a/w S.B. Lalage for Respondent No.1.
Mr. S.D. Rayrikar, AGP, Respondent Nos. 2 & 3.

CORAM : M. S. SONAK, J.
DATE: 19th OCTOBER 2016

P.C :

1] The challenge in this petition is to the orders dated 22.05.2015 and 28.09.2015 made by the Tahsildar and the Sub Divisional Officer exercising the powers and jurisdiction under the Mamlatdars Court Act 1906 (the said Act).

2] The Tahsildar on the basis of application made by the Respondent No.1 has directed the petitioners who claim ownership in respect of the property bearing Gat No.582 to remove the obstructions on the existing right of way. The petitioners revision to the said SDO has been dismissed. Hence, the present petition.

3] Mr. Joshi, learned counsel for the petitioners submits that there is no finding recorded with regard to the existence of the way.

In the absence of the record of this jurisdictional finding, there was no question of exercising any power under the said Act. In this regard, Mr. Joshi, learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court ***Kishore Kumar Khaitan and another -Vrs- Praveen Kumar Singh [(2006) 3 Supreme Court Cases 312]***

4] On the other hand Mr. Amit, learned counsel for the respondent no.1 submits that two authorities have concurrently held that right of the way exists and that further, petitioners have created obstructions upon the user of the same. Such findings of fact are borne out from the material on record. Mr. Amit, learned counsel for the respondent no.1 therefore submits that no case is made out to interfere in the extra ordinary jurisdiction under Article 227 of the Constitution of India.

5] In this case, if the material on record and the impugned orders are perused, it cannot be said that there is no finding recorded as to the existence of right of way or that findings recorded are completely perverse. Two authorities, have concurrently recorded findings of fact but, it must be clarified that findings of fact recorded in proceedings under the said Act, which are by very nature summary proceedings are only *prima-facie*. However, such findings, are sufficient, for exercise of powers under the Said Act.

6] There is some confusion with regard to the directions. However, in the panchanama upon which, both the Tahsildar and SDO have relied upon there is a reference to the existence road through the property bearing Gat No.582. The SDO has also recorded that Tahsildar had personally visited the site and the findings in the impugned order are based upon the panchanama prepared in the course of such inspection.

7] In exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India, it is not possible to re-evaluate or re-appreciate the material on record. This is not the case of complete absence of evidence so as to stigmatize the findings recorded as being wholly perverse. Since findings have been recorded as to the existence of right of way and obstruction thereof, the principle laid down in case of *Kishore Kumar Khaitan (supra)* is not attracted. In that case, there was no *prima-facie* evidence that the plaintiff was in possession of the suit premises on the date of filing of the suit. There is accordingly no case made out to interfere with the impugned orders.

8] However, it is necessary to clarify that the proceedings under the said Act are only summary in nature. Therefore, order made in such proceedings or evidence recorded in such proceedings, is obviously, not binding upon the Civil Court, should such an issue arise before the Civil Court. Mr. Amit, learned counsel for the

respondent no.1 submits that the petitioner's father had already instituted a Civil Suit, in which possibly this issue of access of right of way arises. If that be so, it is clarified that Civil Court shall decide the said Civil Suit in accordance with law and on its own merits without being influenced by the present order or the fact that the impugned orders have not been interfered with in this petition.

9] With the aforesaid clarification, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)