

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No. 12933 OF 2016

Yashwant Namdeo Keskar
And Ors.

...Petitioners

Versus

Shri Jagu Krishna Keskar

...Respondent

....

Mr.Ajay A. Joshi, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd NOVEMBER, 2016

P.C.

1. Heard Mr.Ajay Joshi, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 7.11.2016 passed by the learned 4th Jt. Civil Judge, Junior Division, Pandharpur below Exhibit-58 in R.C.S. No.3/2016. By that order, the learned trial Judge allowed the application made by the respondent, hereinafter referred to as the 'plaintiff', for grant of police aid. The learned trial Judge directed the in-charge of Taluka Police Station, Pandharpur to grant police aid to the plaintiff to repair the suit way and to use it. The police aid

was directed to be granted for two days and the plaintiff shall bear the expenses and pay the same directly to the concerned police station.

3. The plaintiff instituted suit *inter alia* praying for declaration that he has right of way towards Gat No.515/2 passing through Gat No.518/1 and from the bandh (bund) of Gat Nos.517/6 & 517/5 and through Gat No.517/1; for perpetual injunction restraining the defendants from causing obstruction to the user of the plaintiff over that road. During pendency of the suit, the plaintiff filed application Exhibit-5. The learned trial Judge allowed that application on 2.5.2016. Aggrieved by that decision, the defendants preferred appeal which was dismissed by the learned District Judge on 28.9.2016. The defendants thereafter did not challenge these orders.

4. In support of this Petition, Mr. Joshi strenuously contended that though the Court has power to grant police aid, said power is not properly exercised in the facts and circumstances of the present case. He invited my attention to the order passed by the learned trial Judge. By clause (2) of the operative part of the order, the learned trial Judge restrained

the defendants from obstructing the plaintiff from using the suit road without following due process of law. He invited my attention to the order dated 28.9.2016 passed by the learned District Judge and in particular paragraphs-9 and 10 thereof. In paragraph-10, the learned District Judge observed that the plaintiff did not produce any document to show that he has easementary right over the suit way. He further submitted that the plaintiff filed application Exhibit-58 alleging that the defendants have caused obstruction to the plaintiff by damaging the suit way. He submitted that the plaintiff prayed for permission to repair the suit way. Without filing any application for that relief, the plaintiff wants to carry out the repairs with the help of police machinery. The learned trial Judge was, therefore, not justified in allowing the application Exhibit-58. Lastly he submitted that the defendants are ready and willing to permit the plaintiff to use the pathway. He, therefore, submitted that the impugned order deserves to be interfered with.

5. I have considered the submissions advanced by Mr.Joshi. I have also perused the material on record. In the case of **Smt. Neerabai J. Patil v. Narayan D. Patil, A.I.R. 2004**

Bom 225 this Court has recognized the power of the Court to grant police aid in case of breach of injunction order. As noted earlier, application Exhibit-5 filed by the plaintiff for injunction restraining the defendants from causing obstruction to the user of the suit way is allowed by the Courts below. The plaintiff came with the case that the defendants have destroyed the suit way thereby causing obstruction to the plaintiff from using the same. Perusal of the application made by the plaintiff at Exhibit-58 clearly shows that the application is supported by the Court Commissioner's report. Thus, though the injunction was issued against the defendants herein they are causing obstruction to the plaintiff's user of the suit way. The learned trial Judge has considered this aspect in paragraph-6 of the impugned order. The learned trial Judge, therefore, recorded a categorical finding that except the suit way, there is no other access to the plaintiff. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)