

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1667 OF 2016

Rahimatbee Ismail Shaikh and another ... Petitioners
Vs.
Jijaba Dashrath Sumbhe and others ... Respondents

Mr. Madhav Jamdar for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : APRIL 06, 2016

P.C. :

Heard Mr. Jamdar, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 16.02.2015 passed by the learned 2nd Joint Civil Judge, Junior Division, Pune below exhibit-5 in Regular Civil Suit No.1439 of 2014 as also the judgment and order dated 21.10.2015 passed by the learned 4th Ad-hoc District Judge, Pune below exhibit-18 in Miscellaneous Civil Appeal No.156 of 2015. By these orders, the Courts below dismissed the application made by the petitioners, hereinafter referred to as plaintiffs, for injunction restraining the defendants from causing obstruction to the plaintiffs' possession over land bearing Gat No.132 as described in paragraph 2-A of the plaint as also land bearing Gat No.174 as described in paragraph 2-B of the plaint.

3. Mr. Jamdar submitted that the Courts below committed serious error in holding that the Sale Deed dated 01.10.2002 executed by defendant No.1 and his family members in favour of the plaintiffs discloses existence of road. He invited my attention to the map showing the location of Gat No.132 and Gat No.174. Gat No.174, in all, admeasures 3 Hectares 95 Ares. Out of this, plaintiffs have purchased

27 Ares from the northern side. The said 27 Ares are on the southern side of Gat No.132. He submitted that defendants have two roads namely Mali Mala and Laman Mala for approaching Theur Road. In short, he submitted that this map does not show existence of any road.

4. I have considered the submissions advanced by Mr. Jamdar. I have also perused the material on record. In paragraph 21 of the District Court's judgment, the learned District Judge has discussed the Sale Deed dated 01.10.2002 and more particularly, map attached to the said Sale Deed. The learned District Judge observed that the map indicates that one road comes from the northern side of land bearing Gat No.174 and turns towards the eastern side. On the northern side of Gat No.174, Gat No.132 is situate. It is the case of the plaintiffs that there is no road either on the edge of Gat No.132 and / or Gat No.174. After considering the map, the learned District Judge observed that Gat No.132 is situate on the northern side of Gat No.174 and the Sale Deed dated 01.10.2002 indicates that the road enters to the northern side of Gat No.174. Plaintiffs failed to explain as to non-existence of the said road. The learned District Judge, therefore, dismissed the Appeal.

5. With the assistance of Mr. Jamdar, I have gone through the Sale Deed and more particularly, the map attached to the Sale Deed. Prima facie, the findings recorded by the learned District Judge, in paragraph 21, cannot be said to be contrary to the map attached to the Sale Deed.

6. After considering the material on record, the Courts below have held that plaintiffs failed to explain non-existence of the road. In view thereof, I do not find that the Courts below committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)