

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

WRIT PETITION NO. 4893 OF 2016

1. Sk. Fatru s/o Sk. Gulzarshah
age about 72 years,
occ. Agriculture

2. Sk. Jamsher s/o Sk. Fatru
Age 25 years, occ. Agriculture

Both r/o Shirad, Tq. Hadgaon
Dist. Nanded

.. PETITIONERS

VERSUS

Sk. Rasul s/o Sk. Gulzarshah
Age 60 years, occ. Agriculture
r/o Shirad, Tq. Hadgaon
Dist. Nanded

.. RESPONDENT

Mr. R.B. Narvade Patil, advocate for petitioners.
Mr. R.R. Shaikh, advocate for respondent.

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**CORAM : S. B. SHUKRE, J.
DATE : 31st JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith.

3. Heard finally by consent of learned counsel for the respective parties.

4. The first objection taken by learned counsel for petitioners in the impugned order is that the application filed by respondent under section 5 of the Mamlatdar Courts Act, 1906, does not disclose any cause of action,

which objection is refuted by learned counsel for the respondent. On perusal of the application, disclosure of cause of action is more than obvious. The contention is, therefore, rejected.

5. Second objection is to the nature of jurisdiction exercised by the learned Mamlatdar. According to learned counsel for petitioners, under section 5 of the Act, power cannot be exercised by the learned Mamlatdar to grant or create new road. True it is. But, as rightly submitted by learned counsel for respondent, the power has not been exercised by the learned Mamlatdar to create new road. Of course, it is stated in the order of the learned Mamlatdar that respondent has claimed new road but, such reference is not supported by the averments made in the original application filed by respondent. In this application, respondent has nowhere claimed that he wants a new road to be created for accessing his agricultural land. On the contrary, he has consistently stated that the existing road situate towards East side of *dhura* or *bandh* of the filed survey no. 96/B was being obstructed by petitioners resulting in causing of great inconvenience to him for approaching his agricultural field. The panchanama also strongly supports the case of the respondent. The panchanama however, makes mention of the fact that respondent is demanding a new road. However, it cannot be forgotten that this very panchanama has also referred to existence of old road. All these facts have been properly considered by the authorities below and the view taken by the authorities cannot be said to be perverse or against settled principle of law.

6. I am, therefore, of the opinion that no interference in the impugned order is necessary at this stage. Writ petition stands dismissed with costs.

(S. B. SHUKRE)
JUDGE

dyb