

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1730 OF 2017

Sanjay Jaysingh Yadav and Ors ..Petitioners.

Vs

Dattatraya Manik Yadav and Anr. .. Respondents

Dr. Nilesh Pawaskar i/b Priyanka Dubey, Advocate for Petitioners.

Mr. Ganesh T. Jadhav, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 23/02/2017**

PC:

1. Not on Board. At the request of Dr. Pawaskar, taken up for admission. Heard Dr. Nilesh Pawaskar, learned counsel for the petitioner and Mr.Ganesh Jadhav, learned counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 7.1.2017 passed by the learned District Judge-4, Satara in Misc. Civil Appeal no.106 of 2016. By that order, the learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as plaintiffs, and quashed and set aside the Judgment and order dated 29.6.2016 passed by the learned 4th Jt. Civil Judge, Jr. Dn., Satara below Exhibit-5 in Regular Civil Suit No.89 of 2016. The learned District Judge allowed the application Exhibit-

5 filed by the plaintiffs and issued injunction restraining the defendants from causing obstruction in plaintiffs' possession over the suit land or from creating way from the suit land till further orders.

3. In support of this petition, Dr Pawaskar strenuously contended that the learned District Judge failed to appreciate that the defendants are using the suit way for more than 100 years. He has invited my attention to Panchanam dated 25.6.2015 drawn by Circle Inspector. As many as 38 persons made complaint to the Tahasildar setting out therein that the road passing through Gat no. 625 is obstructed by the plaintiffs. On 24.6.2015, Tahasildar, Satara directed Circle Inspector to remove the obstruction after holding inquiry in accordance with law. In pursuance thereof, Circle Inspector carried out panchnama in the presence of panchas and found that obstruction is made by the plaintiffs. Accordingly, necessary order was passed. He also invited my attention to the panchanama dated 24.11.2015 made by Tahasildar. He submitted that the learned trial Judge considered this material and rejected the application for injunction made by the plaintiffs.

4. As against this, the learned District Judge interfered with the discretionary order passed by the trial Court. He has taken me through the impugned order to contend that the defendants have no other way on the eastern side of Gat nos. 624, 626, 627

as held by the learned District Judge. He further submitted that after rejection of application Exh.5 on 29.6.2016 by the trial Court, the defendants filed application Exh.47 on 15.7.2016 for mandatory injunction directing the plaintiffs to remove the obstruction caused on the suit road and the said application is till date pending.

5. On the other hand, Mr Jadhav supported the impugned order. He submitted that though the Tahsildar directed Circle Inspector on 24.6.2015 to hold inquiry by following due process of law. On the same day, without issuing notices to the affected parties, behind their back the panchanama was carried out by Circle Inspector on the very next day, i.e. 25.6.2016. He further submitted that the panchanama dated 24.11.2015 made by Tahasildar is concerned, in fact, spot inspection was fixed on 9.12.2015. Instead of that, the panchanama was made on 24.11.2015 behind back of the plaintiffs. He has also invited my attention to the reasons given by the learned District Judge and submitted that the learned District Judge after considering the documents on record and in particular photographs produced by the plaintiffs and also panchanama made by Tahasildar found that standing crop of wheat, onion and ginger is standing on the suit property. The learned District Judge also after going through the photographs and Googal map observed that there exists alternate way situate towards eastern side of Gat Nos. 624,626

and 627. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the material on record prima facie shows that panchanam dated 24.6.2015 was made by Circle Inspector without following due process of law. Notices were not issued to the parties. That apart, the second panchanama made by Tahasildar on 24.11.2015 also is vitiated as the date was fixed for spot inspection on 9.12.2015. The learned trial Judge while rejecting the application relied upon the panchanama dated 24.6.2015. In my opinion, the learned trial Judge totally misdirected himself in relying upon the panchanama dated 24.6.2015. In other words, the learned trial Judge has exercised discretion arbitrarily, capriciously and perversely.

7. As against this, the learned District Judge considered (1) photographs produced by the plaintiffs showing standing crops, cattle sheds and house of the plaintiffs in the suit land. In panchanama made by Tahasildar, it was also noted that standing crop of wheat, onion and ginger is in the suit land. Some of the photographs and Googal map shows alternate way situate towards eastern side of Gat nos. 624, 626 and 627. In paragraph 28, the learned District Judge observed that the plaintiffs being owners and possessors of the suit land have

every right to protect their possession. The defendants have prima facie failed to show their right of way passing from the suit land.

8. In the case of Wander Limited Vs. Antox India Private Limited, 1990 (Supp.) SCC 727, the Apex Court in paragraph 14 has observed thus:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion”

Applying the tests laid down by the Apex Court to the facts of present case, the learned District Judge was justified in interfering with the order of the trial Court. I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

9. Learned counsel for the parties state that next date of hearing before the trial Court is 3.3.2017. The learned trial Judge is requested to decide the application Exhibit 47 as expeditiously as possible and preferably within two weeks from 3.3.2017. parties shall produce authenticated copy of this order. Order accordingly.

(R.G.KETKAR, J.)