

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2336 OF 2016

Shri Dhondappa Satappa Alure]
Age 60 yrs. Occu. Agri.]
r/a Post : Gholasgaon]
Tal. Akkalkot. Dist. Solapur]..... Petitioner.

Versus

1] Shri Mahadev Gurappa Alure]
Age – adult, Occu. Agri.]
r/a Post : Gholasgaon,]
Tal. Akkalkot, Dist. Solapur]
2] Shri Tinappa Satappa Alure]
Age – adult, Occu. Agri.]
r/a Post : Gholasgaon]
Tal : Akkalkot, Dist. Solapur]
3] Dist. Collector, Solapur.]
4] The State]..... Respondents.

Mr. Samir Kumbhakoni for the Petitioner.
Mr. R S Alange for the Respondent No.1.
Mr. S D Rayrikar, AGP for the Respondent Nos.3 and 4.

CORAM : R. M. SAVANT, J.
DATE : 17th March 2017

ORAL JUDGMENT :-

1 The learned counsel for the Petitioner to carry out the amendment
in terms of the order dated 23/02/2016 forthwith.

2 Rule, considering the challenge raised made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 17/12/2014 passed by the Sub Divisional Officer No.2, Solapur, by which order the Revision Application filed by the Respondent No.1 herein came to be allowed and resultantly the order dated 05/07/2014 passed by the Tahsildar, Akkalkot, Dist. Solapur came to be set aside.

4 It is not necessary to burden this Order with unnecessary details. Suffice it would be to state that the Petitioner herein has invoked Section 5 of the Mamlatdar's Court Act 1908 on the ground that his right of way to approach his land bearing Gat No.229/2 was obstructed by the Respondent No.1. The parties are closely related being real brothers. The original land being Gat No.229 was partitioned between the Petitioner and the Respondent No.1 and as a result of the partition two Gat numbers came to be formed i.e. Gat No.229/1 which is of the Respondent No.1 and Gat No.229/2 which is of the Petitioner. It was the case of the Petitioner in the said application that the road which is on the boundary of the original Gat No.229 has been obstructed by the Respondent No.1.

5 Having regard to the said dispute which was raised by virtue of the

said application filed by the Petitioner, the Tahsildar directed a spot inspection to be carried out in the presence of the parties. Pursuant to the spot inspection, a panchanama was prepared and was made part of the record of the said proceedings before the Tahsildar. In the said panchanama it has been recorded that there is a foot-way interspersed with trees on the boundary (bandh) of the said land bearing Gat No.229. However, the Tahsildar by his order dated 05/07/2014 restrained the Respondent No.1 from obstructing the right of way of the Petitioner.

6 The Respondent No.1 aggrieved by the said order dated 05/07/2014 passed by the Tahsildar, Akkalkot allowing the application filed by the Petitioner challenged the same by way of a Revision under Section 23 of the said Act.

7 The Revisionary Authority i.e. the Sub Divisional Officer adverted to the facts which had come on record as also the material which was on record i.e. the panchanama. However, on the ground that the Petitioner has for the last 60 years did not seek any road to approach his land being No.229/2 from Gat No.229/1 allowed the said Revision Application filed by the Respondent No.1 and thereby set aside the order dated 05/07/2014 passed by the Tahsildar. The Sub Divisional Officer has therefore principally on the ground that no such right of way was sought by the Petitioner for the last 60

years deemed it appropriate to set aside the order passed by the Tahsildar. The Sub Divisional Officer in the said process has not considered the findings recorded by the Tahsildar and thereby has not considered the material which is on record.

8 The learned counsel appearing for the Petitioner would seek to draw this Court's attention to an Agreement between the Petitioner and the Respondent No.1 executed on 05/12/2000 to contend that the Respondent No.1 has agreed to the Petitioner using the way on the boundary (bandh) of the erstwhile Gat No.229.

9 Per contra, the learned counsel appearing for the Respondent No.1 Shri Alange would contend that there is neither mention of any cart way or any way for heavy vehicles both in the panchanama as well as in the order dated 05/07/2014 passed by the Tahsildar.

10 In my view, it is not necessary for this Court to delve into the said aspect as this Court is inclined to remand the matter back to the Sub Divisional Officer, Solapur for a de-novo consideration of the Revision Application. For the reasons mentioned herein above, the impuned order dated 17/12/2014 passed by the Sub Divisional Officer No.2 Solapur is accordingly quashed and set aside and the Revision Application is remanded back to the Sub Divisional

Officer for a de-novo consideration in terms of the observations made herein above. The contentions of the parties are kept open for being urged before the Sub Divisional Officer. The Sub Divisional Officer would decide the Revision Application on its own merits and in accordance with law. The parties to appear before the Sub Divisional Officer on 29/03/2017. The Sub Divisional Officer may thereafter decide the Revision Application latest by 31/04/2017. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]