

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

WRIT PETITION NO.8474 OF 2014

Sou. Sunita Navnath Sandhan : Petitioner.
versus
Pandharinath Bapurao Sandhan and ors. : Respondents.

Mr. Sachin Gite for the Petitioner.
Mr. S P Shinde for the Respondent No.1.
Mrs. M S Bane "B" Panel Counsel for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT, J.
DATE : 10th January 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 11/03/2014 passed by the Sub Divisional Officer, Dindori Division, Dindori, Dist. Nashik. By the said order the Revision (wrongly termed as an Appeal in the operative part of the impugned order) filed by the Respondent No.1 herein came to be allowed and resultantly the order dated 24/12/2013 passed by the Tahsildar, Dindori in Vahivat Case No.8/2012 came to be set aside.

2 The Petitioner herein is the owner/occupant of Gat No.130-Part admeasuring 80 Ares. The Respondent herein is the owner/occupant of Gat No.130-Part admeasuring 20 Ares. It seems that the parties are closely related. The Petitioner has invoked Section 5 of the Mamlatdar's Court Act 1908 (for

short “the said Act”) on the ground that the Respondent herein has obstructed the 11 ft wide road which is on the northern side of his land. As is the procedure in so far as an application under Section 5 of the said Act is concerned, a site inspection was carried out and pursuant to the site inspection a panchanama was recorded. Pertinently in the said panchanama it is recorded that there is a 5 ft foot way going through Gat No.140 in which there are steel angles put beyond the said 5 ft. In so far as the Petitioner is concerned, he relied upon the Memorandum of Partition which records the partition which has taken place in respect of the lands which were commonly owned between the Petitioner and the Respondent. In the said Memorandum of Partition, in so far as the land of the Petitioner is concerned, it has been recorded that the 11 ft. wide road in the land of the Respondent should be kept open for access to the Petitioner.

3 The Tahsildar having regard to the material on record allowed the said application by his order dated 24/12/2013 and directed the Respondent to remove the alleged obstructions in the said 11 ft. wide road. The Respondent aggrieved by the said order dated 24/12/2013 filed a Revision before the Sub Divisional Officer under Section 23(2) of the said Act. As indicated above, the said Revision came to be allowed by the Sub Divisional Officer, Dindori who by the impugned order has set aside the order dated 24/12/2013 on the ground that the Petitioner has failed to show existence of

any easmentary road to the extent of 11 ft from the land of the Respondent to approach his land.

4 The learned counsel for the Petitioner Shri Sachin Gite would submit that the existence of the road has been recorded in the Memorandum of Partition dated 12/08/2009 executed between the parties and therefore the Petitioner has right of way through the land of the Respondent by way of the said 11 ft. wide road to approach his land.

5 In my view, it is not possible to accept the said contention of the learned counsel for the Petitioner in the light of the panchanama on record wherein it is specifically recorded that there is 5 ft. wide foot way. If the Petitioner is claiming any right on the basis of the Memorandum of Partition then it is for the Petitioner to assert such right by adopting appropriate proceedings. However, in so far as the application under Section 5 of the said Act is concerned, the Petitioner has not been able to substantiate his case of existence of 11 ft. wide road through the land of the Respondent on the basis of which he would claim easementary right.

6 In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, it is clarified that in the event any proceedings are filed by

the Petitioner to assert his right if any on the basis of the Memorandum of Partition, the same would be adjudicated on their own merits and in accordance with law.

[R.M.SAVANT, J]