

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

WRIT PETITION No.13997 OF 2018

Dinkar s/o Shankar Gaware and others. Petitioners.

Versus

Shahurao s/o Fakirrao Gaware and others. Respondents.

...

Mr U U Wagh, Advocate for petitioners.

Mr A.G.Ambetkar Advocate for respondent nos.1 to 5.

...

Coram : N.M. Jamdar, J.

Date : 18 December 2018.

ORAL ORDER :-

The petitioners/original defendants have challenged the order passed by the learned Civil Judge and learned District Judge granting injunction in favour of the respondents/plaintiffs. The learned District Judge had added a rider to the order of injunction.

2. The property in question is situated at village Shirapur, Taluka Pathardi, District Ahmednagar. Prior to filing of the present suit, the parties had approached the Authorities under the Mamlatdar Courts Act in respect of the use of a road. In these proceedings, the

orders that were passed were subject matter of challenge in the writ petition. Thereafter, the respondents/plaintiffs filed a Civil Suit seeking an order of injunction to restrain the petitioners from closing the road and obstructing the respondents/plaintiffs. In this suit, the respondents/plaintiffs filed an application for temporary injunction. The learned Civil Judge allowed the temporary injunction application by order dated 15 September 2018. The appeal was filed by the petitioners in the District Court. The order of injunction was not stayed and ultimately the appeal was dismissed directing the learned Civil Judge to dispose of the suit within a period of six months.

3. I have heard the learned counsel for the parties.

4. After considering the arguments and perusing the record, I am of the opinion that the matter needs to be sent back to the Trial Court for reconsideration of the application below exhibit 5.

5. The reason for this conclusion is that both the Courts in the impugned order have solely relied upon the record of the case under the Mamlatdar Courts Act and the panchnama therein. The petitioners have pointed out that the case under the Mamlatdar Courts Act was subsequently withdrawn by the respondents/plaintiffs to file a Civil Suit. There does not appear to be an independent application of mind and what is relied upon is only the record under

the Mamlatdar Courts Act in the withdrawn proceeding. When the Civil Suit was filed, though it is not impermissible to rely on measurement and such other material under the Mamlatdar Courts Act, the object of the Civil Suit is a detail inquiry and no summary inquiry as contemplated under the Mamlatdars Court. While granting injunction, therefore, it was expected of the Civil Court to apply its mind independently to the material on record and then seek support from the record under the Mamlatdar Courts act. This endeavor having not been done. The applications below Exhibit 5 will have to be reheard by the learned Civil Judge.

6. As far as position till the matter is disposed of by the learned Civil Judge, it has to be noted that the remand is necessitated because of the above reasons and there could be material in favour of the respondents/plaintiffs to support the record under the Mamlatdar Courts Act. The order of injunction in favour of respondents/plaintiffs is operating since September 2018 and in the appeal filed by the petitioners, no stay was sought for or granted. This order will thus have to be continued till the fresh hearing by the learned Civil Judge.

7. Accordingly, the learned Civil Judge will hear the application below Exhibit 5 afresh. All contentions of the parties are kept open. The learned Civil Judge will make an endeavor to dispose

of the application within a period of six weeks, if there are no earlier time bound directions. Only for the statistical purposes the order passed by the learned Civil Judge Junior Division, Pathardi dated 15 September 2018 and the learned Adhoc District Judge-4 dated 22 November 2018, are quashed and set aside. However, in the facts and circumstances of the case the order of injunction dated 15 September 2018 to continue till the disposal of the application below Exhibit 5 afresh.

8. Writ Petition is disposed of in above terms.

(*N.M. Jamdar, J.*)

...