

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

WRIT PETITION NO. 1384 OF 2018

PRABHAKAR PUNJAJI POPALGHAT AND OTHERS.
-VERSUS-
THE SUB DIVISIONAL OFFICER AND OTHERS.

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Advocate for the Petitioners : Shri V.P.Latange.
AGP for Respondents 1 and 2 : Shri V.S.Badakh.
Advocate for Respondent 3 : Shri S.S.Londhe.

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CORAM : RAVINDRA V. GHUGE, J.
DATE : 05th March, 2018.

PER COURT :-

1] The petitioners have challenged the order of the Revisional Authority dated 15/11/2017, by which, the revision filed by respondent Nos. 3 and 4 has been allowed and by virtue of the impugned order, the petitioners are practically land locked.

2] It appears from the record that respondent Nos. 3 and 4 filed RCS No. 22/2016 on 18/02/2016 seeking perpetual injunction against the petitioners. The suit is based on the contention that the petitioners/defendants should not be allowed to use the cart-way, which they are presently using and which runs through farm gut No. 72 belonging to the original plaintiffs. By order dated 28/07/2016, the Trial Court has rejected the application Exh. 5 seeking temporary injunction filed by the plaintiffs and has concluded that the

plaintiffs desire the injunctory orders as a guise for closing the ancestral cart way of the defendants to approach their field and therefore, landlocked the defendants. The rejection of the said application by the Trial Court was mentioned before the Revisional Authority, which has passed the impugned order dated 15/11/2017.

3] There is no dispute that the suit filed by the plaintiffs is in the same cause of closing the purported ancestral path and for landlocking the petitioners herein. The Trial Court has refused to grant injunction and has allowed the defendants to use the same cart way. It is informed that a Miscellaneous Civil Appeal is pending before the Appellate Court filed by the original plaintiffs.

4] It is therefore obvious that the order passed by the Revisional Authority under Section 23(2) of the Mamlatdars' Courts Act, 1906 runs counter to the observations and conclusions drawn by the Trial Court at a prima-facie stage in its order dated 28/07/2016, by which, the temporary injunction application filed by respondent Nos. 3 and 4 herein has been rejected.

5] Considering the above, this petition is partly allowed. The impugned order dated 15/11/2017 passed by the Revisional Authority stands quashed and set aside.

6] Considering the observations of the Trial Court in its order dated 28/07/2016 in RCS No. 22/2016, both the parties are relegated to the status as existing on 28/07/2016 and shall further be subject to the decision of the Appellate Court in the pending Miscellaneous Civil Appeal filed by Respondent Nos. 3 and 4 herein.

(RAVINDRA V. GHUGE, J.)

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