

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 935 OF 2017****Gahininath Tulshiram Dudhe & Ors.****..... Petitioners****VERSUS****Amin Fatubhai Mujawar****..... Respondent**

Mr.Saurabh Bhutada, i/b. Mr.Harshad Bhadbhade for the Petitioners.

Mr.Rahul Kadam for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 17th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 8th September, 2016 passed by the learned District Judge – Barshi dismissing the Civil Misc.Appeal No. 77 of 2014 (Ex.15) filed by the petitioners. In the said appeal preferred by the petitioners, the petitioners have impugned the order passed by the learned trial judge below Ex.5 on 16th July 2014 and had granted injunction against the petitioner.

2. The petitioners have filed an application under section 5 of the Mamlatdars' Courts Act, 1906 against the respondent before the learned Tahsildar. The learned Tahsildar passed an order granting injunction in favour of the petitioners and against the respondent. The respondent filed a civil suit for various reliefs and also filed Ex.5 therein. The learned Civil Judge passed a detailed order after considering the pleadings and documents produced by both parties and

also after considering the order passed by the learned Tahsildar granting interim relief in favour of the respondent and against the petitioners. The learned District Judge – 1 Barshi dismissed an appeal preferred by the petitioners.

3. Learned counsel for the petitioners invited my attention to some of the findings rendered by the learned Tahsildar and also the findings rendered by the two courts below. He submits that the civil court could not have brushed aside the findings rendered by the learned Tahsildar who had granted injunction in favour of the petitioners after considering the Panchanama.

4. The grievance of the respondent (original plaintiff) on the other hand was that the learned Tahsildar could not have granted injunction in favour of the petitioner. The Panchanama was drawn belatedly. The learned Tahsildar did not follow the provisions of the Mamlatdars' Courts Act, 1906 while conducting an enquiry under section 5 of the said Act.

5. The learned trial judge as well as the learned District Judge have rendered various findings of fact holding that there was alternate way available to the petitioner. The learned District judge has also considered the map produced by the respondent (original plaintiff) showing the position of alternate way available to the petitioners for their land. The learned trial judge has also rendered a finding that the *prima facie* the petitioners could not make out a case in respect of their right to use the disputed way for carrying their bullock cart etc.

6. In my view, the findings rendered by the learned trial judge as well as the learned District Judge being concurrent findings and being not perverse cannot be interfered with by this court under Article 227 of the Constitution of India.

7. Writ petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

8. Hearing of the suit is expedited.

[R.D. DHANUKA, J.]