

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7325 OF 2018

Sanjeevan Vidyalaya Trust Panchagani ... Petitioners
Vs.
S.M. Batha Education Trust, Panchagani ... Respondents

Mr. Sugandh B. Deshmukh, Advocate for the petitioners.
Mr. P.K. Dhakephalkar, Senior Advocate a/w. Mr. Vivek Walavarkar,
Priya Rombade, Aniket Worlikar I/b. Deven Dwarkadas & Partners,
for the respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **10th July, 2018.**

P.C.:

This Writ Petition is directed against the order dated 3rd July, 2018 passed by the learned District Judge, Satara thereby dismissing the Miscellaneous Civil Appeal No. 105 of 2018.

2. The respondents are the original plaintiff in Regular Civil Suit No. 34 of 2018, which is filed for injunction simplicitor for the access which admittedly runs through the property of the defendants/petitioners. The property situates at Mahableshwar. The petitioners/defendants are the registered trust under the Maharashtra Trust Act, 1950. The trust runs high school and are adjacent to Wai-Mahableshwar east-west road. Behind the property of the petitioners/defendants, there is a property of respondents/plaintiffs.

They have property towards South. Thus, adjacent to that property of the petitioners/defendants, there is another property, i.e., Gat No. 507 on which the girls hostels of the petitioner-school is located.

2. The respondents/plaintiffs in the suit has prayed that their approach road to Wai-Mahableshtar, which is running through the property of petitioners, i.e., plot no. 511 is to be made available to the respondents/plaintiffs and the petitioners/defendants be restrained from obstructing the way of the plaintiffs. The trial Court has granted injunction in favour of the respondents/plaintiffs. The said order was challenged by filing Miscellaneous Civil Appeal No. 105 of 2018 and the learned District Judge-2, Satara has affirmed the order of the trial Court. Being aggrieved, the petitioners filed this Writ Petition.

3. The learned counsel for the petitioners has submitted that the respondents/plaintiffs could not bring any evidence to show that recently they are using the said approach road. He submitted that the respondents/plaintiffs are not using the said road but suddenly they started bringing the vehicles through the property of the petitioners, i.e., plot no. 511 and therefore, the petitioners did not allow them in the interest of safety of the students. The learned

counsel has further submitted that this road has divided the property of the plaintiffs in two parts. He further submitted that the decree in R.C.S. No. 305 of 1940 which is relied by the respondents/plaintiffs was never implemented. The petitioners/defendants have given challenge to the suit on the ground of Sections 10 and 11 of Code of Civil Procedure. The order dated 3rd July, 2018 passed by the learned District Judge-2, Satara in Miscellaneous Civil Appeal No. 105 of 2018 is to be set aside.

4. The learned senior counsel for the respondents has submitted that the respondents are the educational trust and is running a school. It is the only way for the school buses to carry the children and the only approach road for the school to reach by Mahableshwar -Wai road. He relied on the decree passed by the Civil Court in R.C.S. No. 305 of 1940.

5. Heard the submissions. Perused the orders passed by the learned Judge of the trial Court and the Appellate Court. In both the judgments, all the points which were raised by the counsel are considered. The suit was comprised between the predecessor in title of both the parties and decree was passed in R.C.S. No. 305 of

1940. Moreover, it was agreed between the parties that the plaintiff-trust would pay Rs.20/- towards the maintenance charges of the said road in lieu of use of that road through the property. The Appellate Court has referred to Exhibit 22 which is a receipt of the year 1957 of the payment of maintenance charges of Rs.700/- which was lump sum payment of few years by the plaintiff-trust and the amount was accepted by the petitioners/defendants. The learned Judge of the Appellate Court has properly appreciated that *prima facie* the Court has to take a view as per the comprise decree and accepted that there is existence of approach road for the respondents/plaintiffs. Whether the road was really created or not and whether it was put in use after the decree or it was in fact never used and there was no road recently, hence no cause of action arose are the issues which can be decided after the evidence. The concurrent finding given by the Court cannot be disturbed. Moreover, the learned District Judge has directed the trial Court to expedite the suit within three months from the date of the order.

6. In view of this, the trial Court is requested to expedite the suit and decide the same preferably on or before 20th December, 2018. Parties shall cooperate the learned Judge of the trial Court.

7. The road is to be used for the purpose of school buses, for picking the children from the school and for office purpose.
8. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)