

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

**SECOND APPEAL (ST.) NO. 25760 OF 2018
WITH
CIVIL APPLICATION NO. 1476 OF 2018
IN
SECOND APPEAL (ST.) NO. 25760 OF 2018**

Mangalabai Vitthal Jadhav & Anr.

....Appellants

V/s.

Manisha Gokul Jadhav & Ors.

....Respondents

Mr. Jayendra D. Khairnar for the appellants.

Mr. Pravartak Pathak for respondent nos.1 and 2.

Mr. A.R. Patil, AGP for respondent no.11.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 10TH DECEMBER, 2018.**

P.C.:

. The appellants herein have challenged the judgment dated 04/07/2018 whereby the learned Ad-hoc District Judge-1, Malegaon allowed the Regular Civil Appeal No.120/2015 filed by the Respondent and set aside the judgment and decree dated 21/07/2015 passed by the learned Joint Civil Judge, Senior Division, Malegaon in Regular Civil Suit No.352/2013 and dismissed the cross objections filed by the appellants herein.

2. Heard Mr. Jayendra Khairnar, learned counsel for the appellants,

Mr. Pravartak Pathak, learned counsel for respondent nos.1 and 2 and Mr. A.R. Patil, learned AGP for respondent no.11. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The appellants were the plaintiffs in the suit and the respondent nos.1 and 2 were the defendants and shall be hereinafter referred to as 'the plaintiffs' and 'the defendants' respectively.

4. The defendants are the owners of the property under Gat No.120 whereas the plaintiffs are the owners of the adjoining property under Gat No.124 situated at Vaygaon – Satmane Road, Malegaon. The defendants had filed proceedings under Section 5 of Mamlatdars Courts Act, 1906 alleging that the plaintiffs had obstructed the passage passing through Gat No.124 and thereby prevented them from using their agricultural land under Gat No.117 and 120. The said proceedings i.e. Vahivat Case No.28/2011 were contested by the plaintiffs. The learned Mamlatdar examined the parties and their witnesses and by order dated 20/09/2013, allowed the application filed by the defendant nos.1 and 2 and directed the plaintiffs to remove the obstructions on the passage leading to Gat No.120 and further

restrained them from obstructing the defendants from using the said passage.

5. The plaintiffs filed the suit bearing Regular Civil Suit No.352/2013 for a declaration that the order dated 20/09/2013 in Vahivat Case No.28/2011 is null and void and sought to restrain the defendants from using the suit way.

6. The plaintiffs denied that any passage/pathway is passing through Gat No.124. The plaintiffs claim that they had purchased Gat No.124 from Ashok Mahale. They have alleged that the disputed way is not shown either in the sale deed or in the village map. The plaintiffs claim that the defendant nos.1 and 2 are using the passage / vahiwat from Gat No.117. The plaintiffs claim that the Mamlatdar failed to consider the evidence adduced by them and that the judgment in Vahiwat Case No.28/2011 is against the law and is illegal.

7. The defendants resisted the claim of the plaintiffs. The learned Trial Judge, after considering the evidence adduced by the respective parties, partly decreed the suit and held that the judgment and order dated 20/09/2013 is null and void as against the defendant no.1 and

further restrained the defendant no.1 from using the said access. The learned Judge further held that the order is legal and valid as against the defendant no.2 and that the defendant no.2 is entitled to use the same.

8. The defendants challenged the said order in Regular Civil Appeal No.120/2015. The plaintiff herein also filed cross objections challenging the findings that the impugned order was valid against the defendant no.2 and that the defendant no.2 is entitled to use the suit. The learned Appellate Court, by impugned judgment dated 04/07/2018 allowed the appeal and dismissed the cross objections and consequently dismissed the suit filed by the plaintiff. Hence this Appeal under section 100 of the Civil Procedure Code.

9. Mr. J.D. Khairnar, learned counsel for the appellants/plaintiffs claims that the proceedings under Section 5 of the Mamlatdars Court Act were barred by limitation. The learned Mamlatdar had not followed the procedure under the Act. The spot panchanama was prepared without intimation to the plaintiffs. The order in Vahiwat case is not based on evidence and was liable to be set aside. He has further submitted that both the Courts below failed to consider that the

defendants/respondents had alternate access through Gat No.117.

10. I have perused the records and considered the submissions advanced by the appellants/plaintiffs.

11. Section 5 confers powers on the Mamlatdar to address the grievances and give quick relief to agriculturists in relation to the land used for agriculture. The orders passed under this Section are not appealable but are subject to revision. A plain reading of Section 22 would clearly indicate that the order passed under the Act are not conclusive and the aggrieved party can seek relief from the Civil Court. The provision of the Act demonstrate that the Civil Court is not bound by the decision of the authorities under the Mamlatdars Act. The party in whose favour the Mamlatdar has passed an order can enjoy such order only until such order or decision is otherwise decreed or ordered or such person is ousted by a competent Civil Court.

12. It is thus evident that the rights claimed before the authorities under the Act are transitory in nature and can be finally crystallized only in a civil remedy before the Civil Court. There can thus be no dispute that the party approaching the Civil Court is required to prove

his case independently on its own merits and not use the Civil Court as an Appellate Forum to challenge the findings rendered by the Mamlatdar, as sought to be done by the appellants herein.

13. Be that as it may, the records reveal that the property under Gat No.124 was originally owned by the defendant no.2. By deed of sale dated 18/08/1999, Walyabai Sukdeo Fatangade sole, the wife of the defendant no.2 had sold the property to Daga Bhagwandas Sonawane. Said Daga Sonawane had sold the property to Ashok Mahale by sale deed dated 16/11/1999. Both these sale deeds make a reference to the suit way and state that Walyabai Fatangade, the wife of the defendant no.2 had reserved right to use the suit way through Gat No.124 for herself and her family members. The plaintiffs had purchased the property under Gat No.124 from Ashok Mahale by deed of sale dated 30/04/2003 knowing fully well that the defendant no.2 had right of way through the said property. It is therefore not open to the plaintiff to dispute the existence of the access or to obstruct the defendants from using the access through Gat No.124. In the light of this evidence, the First Appellate Court has dismissed the suit of the plaintiffs.

14. The findings rendered by the First Appellate Court are based on the evidence on record. These findings of fact are neither perverse nor illegal. The appeal does not involve substantial question of law. The appeal has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)