

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

WRIT PETITION NO. 14207 OF 2017

Smt.Chandravati Chandrakant Pilankar ...Petitioner

Versus

Shri. Laxman Vasant Aarondekar & Ors. ...Respondents

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Mr. Mahesh V. Rawool for the Petitioner.
Mr. G.H. Keluskar for Respondent Nos. 1 and 4.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: AUGUST 03, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and decided at the stage of admission.
2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 25th October, 2017 passed by the learned District Judge-1, Sindhudurg at Oros in Misc. Civil Appeal No. 3 of 2017, setting aside the order of the trial Court below Exhibit 5 in Regular Civil Suit No. 43 of 2016 filed by the petitioner, is challenged. The petitioner is the original plaintiff.

3. In the present mater, the crux is whether the Mamlatdar can decide the order in respect of the foot way or has power to decide the existence of the road in non-agricultural land or not.

(Emphasis placed)

4. Admittedly, the present land is a non-agricultural land. However, the Mamlatdar has entertained and given finding about the existence of the road after the order was passed that the said land is non-agricultural land. The trial Court has granted injunction against the defendants. However, the District Court has set aside the order passed by the trial Court below Exhibit 5. The trial Court has considered the powers of Mamlatdar under Section 5 of the Mamlatdar's Courts Act, 1906 in respect of the agricultural land and non-agricultural land. The learned District Judge has not considered this point.

5. The learned Counsel for the petitioner submits that he has made submissions before the learned District Judge on this issue, however, it was not considered.

6. In view of this, the matter in fact could have been remanded to the District Court. However, it is informed by the learned Counsel for the respondents that the suit is of 2016 and it is pending in small Taluka Court where there is no pendency. The plaintiff's evidence is over and his second witness is going to enter the box.

7. Under such circumstances, the trial Court is directed to frame issue regarding the powers of Mamlatdar under Section 5 of the Mamlatdar's Courts Act, 1906 in respect of non-agricultural land. The trial Court to decide the issue on the basis of the evidence placed before it without getting influenced by any other order. The trial Court can proceed with the matter. Parties to co-operate. The trial Court to expedite the suit on or before 31st October, 2018. Parties to maintain status quo till the final decision of the suit.

8. With this, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)