

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12712 OF 2018

1. Bharatkumar Murlidhar Patil,
Age : 53 years, Occ. Agri.,
2. Vilas Murlidhar Patil,
Age : 50 years, Occ. Agri.,
3. Sanjay Murlidhar Patil,
Age : Major, Occ. Agri.,
4. Prakash Shamrao Patil,
Age : Major, Occ. Agri.,

Petitioner nos.1 to 4,
r/o. At Post Nagaon,
Tq. and Dist. Dhule

..Petitioners

Vs.

1. Chindha Gajmal Thelari,
Age : Major, Occ. Agri.,
2. Vasant Bhaskar Patil,
Age : Major, Occ. Agri.,

Respondent nos.1 and 2
r/o. At Post Tisgaon Dhandhane
Post. Devbhane,
Tq. And Dist. Dhule

..Respondents

Mr. Subodh Shah, Advocate for petitioners

Mr. Amol Sawant, Advocate for respondent nos.1 and 2

CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 26, 2019
PRONOUNCED ON : NOVEMBER 26, 2019

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal.

2. The challenge in this Writ Petition is to the order passed by the Sub-Divisional Officer (S.D.O.) on 12.06.2018 in R.T.S. (Revision No.40/2018 - Tisgaon). By this order, the S.D.O. set aside the judgment and order dated 15.03.2018 passed by the Tahsildar (Mamlatdar) in Vahivat Suit No.20 of 2017.

3. Heard learned Counsel for the parties. Perused the documents on record.

4. Mr.Subodh Shah, learned Counsel for the petitioners, would submit that the petitioners are owners and in possession of the agricultural land gat no.107/1 (old survey no.5). Land gat no.111 belongs to respondent no.1. Respondent no.2 owns the land

gat no.110/1 also. According to the learned Counsel, the petitioners are owners of dominant heritage, while the lands belonging to the respondents are servient heritage. There is a way/road that runs through the land gat no.110/1, 110/2 and land gat no.111. The said way/road has been used by the petitioners for over 50 years. The respondents, in the recent past, blocked the said way by dumping Murum midway. The petitioners, therefore, filed suit under Section 5 of the Mamlatdar's Court Act. The Mamlatdar, on appreciation of the evidence and the site inspection report, was pleased to grant injunction against the respondents with further direction to remove the impediment raised in the way. Learned Counsel submits that the S.D.O. ought not to have upset the judgment and order passed by the Mamlatdar on the basis of the fact finding report. He took me through the documents filed on record to submit that the Mamlatdar was right in granting injunction against the respondents.

5. Mr.Sawant, learned Counsel for the respondents, would, on the other hand, submit that there was no compliance of the provisions of Section 7 of the Mamlatdar Court's Act in as much as the plaint/suit does not conform to the mandatory requirements of the said section. The village map delineate the way/road through land gat no.111. The owner of the land gat no.110/2 was a necessary party to the suit before the Mamlatdar. The petitioners have another way to negotiate with their land. The Mamlatdar did not make any observations as regards existence of another way. Turning to the documents on record, learned Counsel would submit that the deed granting right of way did not see the light of the day for over years. The mutation entry giving effect to the deed has been made long after execution of the said document. The documents have not been proved. Learned Counsel for the respondents supported the impugned judgment and order.

6. The petitioners are the plaintiffs in a suit instituted under Section 5 of the Mamlatdar's Court Act. Admittedly, the petitioners owned and possessed the land gat no.107/1 (old survey no.5), while the land gat no.111 (old survey no.3) belongs to respondent no.1, whereas land gat no.110 originally belong to the Government. It was allotted to one Vana Chindhu Mahar. The eastern portion of the said land was sold to respondent no.2, while western portion was purchased by Babulal Gajmal Patil. By said transaction, the land gat no.110 came to be subdivided as gat nos.110/1 and 110/2, respectively.

The petitioners purchased land gat no.107 way back in 1963 under registered sale deed. One Bankatlal Marwadi was owner of lands namely, gat nos.107 (old survey nos.5 and 6) and 111 (old survey no.3). The petitioners claim to have right of way through land gat nos.110/1, 110/2 and 111. There is on record registered deed dated 10.06.1971 executed

by owners of land gat nos.110/1 and 110/2, whereunder the petitioners have been granted right of way (bullock-cart way) through land gat no.110/1 and 110/2. The mutation entry giving effect to the said sale deed has been made in the revenue record in June, 2017. The fact, however, remains that a right of way through the land gat nos.110/1 and 110/2 has been granted to the petitioners as an approach way to their land gat no.107/1.

7. It appears that before the Mamlatdar, no oral evidence was let in by the petitioners. The documents were simply produced for inspection by the Mamlatdar. Since deed granting right of way dates back to the period over thirty years, it may be looked into to find the petitioners to have been granted right of way. The question is whether, there exists a way through the land gat no.111. The village map on record does not delineate the way, as is alleged, to exist, through the land gat no.111. It needs no mention that the averments in the plaint

need to be proved by evidence. In the plaint before the Mamlatdar, the petitioners claimed to have been using a way through the land gat no.111 over 50 years. In support of the said contention, neither the petitioners testified on oath nor any witness has been examined. The village Talathi made site inspection on the instructions of the Mamlatdar. Section 19(2) of the Mamlatdar Court's Act empowers the Mamlatdar to summon and examine any witness. He may call for and cause to be proved any document, which has not been applied for or produced by either of the parties. Where he considers it expedient in the interest of justice so to do, he may make personal inspection of the property in dispute in the presence of/or after issuing notice to the parties.

8. In my considered view, the Mamlatdar ought to have personally visited the land gat no.111 to find, whether there exist a way through the said land. The petitioners have specifically averred in the plaint to have no another way to approach their

land gat no.107/1. The respondents/defendants, on the other hand, have specifically contended that there exist some other way for the petitioners to approach their land. This vital aspect appears to have been ignored by the Mamlatdar. The S.D.O., on the other hand, non-suited the plaintiffs. The S.D.O. found the plaint to have been instituted with a view to have a nearest approach way to the land gat no.107.

9. The village Talathi paid visit to the land in the presence of the plaintiffs and defendants. The site inspection report is on record. The report states that the land gat no.111 is situate to the west of river '*Bhat*'. Near the northern band of land gat no.106, there is a *Nala* (brooklet) like land that runs east-west towards the land of the petitioners. In some portion of the land gat no.111, there was wheat crop. The remaining portion of the land was barren. The site inspection report does not state in so many words that there exists a way through the land gat no.111. The photographs (not proved) on

record appear to have delineate a way/road that runs through the land gat no.110/1 and 110/2. The owner of the land gat no.110/2 is not a party to the suit. There is nothing to indicate him to have admitted the petitioners' claim. In view of all these facts, the S.D.O. was justified in setting aside the judgment and order passed by the Mamlatdar on 15.03.2018.

The objection as regards the plaint to have not been in conformity with the provisions of Section 7 of the Mamlatdar' Act are concerned, it is found that the plaint is substantially in conformity therewith.

10. In my view, the matter needs to be remanded to the Mamlatdar to decide afresh, for recording of the evidence, if any, of the parties to the suit. The parties are also expected to prove the documents they have relied upon. The Mamlatdar may, if he thinks fit, personally visit the site and also examine any of the local persons to find, whether there really

exist a way/right through the land gat no.111. The Mamlatdar is also expected to find whether, without there being a right of way to the petitioners as claimed, land gat no.107 gets locked or is there any alternative way. If yes, what is its effect on the suit. In view of the above, the Writ Petition partly succeeds.

11. In the result, the Writ Petition is partly allowed. The impugned order dated 12.06.2018 passed by the Sub-Divisional Officer, Dhule in R.T.S. (Revision No.40/2018 – Tisgaon) is set aside. The matter is remanded to the Mamlatdar to decide afresh in the light of the observations made herein above. Rule partly made absolute accordingly.

12. The petitioner shall appear before the Mamlatdar on 16.12.2019.

[R.G. AVACHAT, J.]

kbp