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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4269 OF 2019

Gulabrao Ramchandra Deshmukh & Ots.	..Petitioners.
V/s.	
Laxman Sadashivrao Khade & Ors.	..Respondents.

Mr.Shantanu S.Raktate for the petitioners.

Mr.D.D. Rananaware for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 10, 2019

ORAL JUDGMENT

Heard Mr.Raktate, learned counsel for the petitioner and Mr.Rananaware, learned counsel for the respondents.

2. Challenge in the petition is to the order dated March 11, 2019 by which learned Appeal Court has allowed the respondents' appeal and vacated the injunction granted by the trial Judge, restraining the respondents from using the suit road.

3. Mr.Raktate, learned counsel for the petitioners points out the Appeal Court has only relied upon the judgment and decree in

Regular Civil Suit No.320/2012 in order to hold that the petitioners had failed to make a *prima facie* case. He points out that the petitioners were not even a party to R.C.S. No.320/2012. He points out that case of the respondents that the suit road was in existence for over 100 years is expressly false because existence of suit road is not even reflected in the revenue record or in the village plan. He submits that since this matter has not been considered by the Appeal Court, the impugned order warrants interference and the order of the trial Judge needs to be restored.

4. Mr.Rananaware, learned counsel for the respondents defends the impugned order on the reasoning reflected therein. He points out that the respondents secured the order under the Mamlatdar Courts Act which till holds the field. He points out that the Circle Officer, Vaduj has even personally gone and implemented the order of the Tahsildar made under the Mamlatdar Courts Act. He submits that thereafter, the petitioners persisted in creating obstructions by taking law in their own hands. He submits that in these circumstances, the Appeal Court has rightly vacated the injunction which has been granted by the learned trial Judge.

5. The reasoning of the Appeal Court is to be found in paragraph 10 of the impugned order, which reads thus :-

“10. Panchanama dated 31/10/2018 shows that the Circle Officer, Vaduj who has personally implemented the order of Tahasildar by removing obstruction from way on Sarbandh of land Gat No.138 & 13. Prima facie, there is a disputed way on Sarbandh of land Gat No.13 & 14 towards eastern side. The Ld. Trial Court has not correctly interpreted the order of Tahasildar dated 18/8/2018. The Ld. Trial Court has not taken into consideration panchanama dated 31/10/2018 and also not appreciated facts that the Circle Officer has already removed obstruction from way on Sarbandh of land Gat No.138 & 13, which admittedly goes through the suit land Gat No.13 & 14, to go to Vasti of defendants. It is further admitted fact on record that road is in existence on Sarbandh of land Gat No.14, 100, 102, 19, 101, 33, 32, 116, 89 and 90,, by Judgment and decree passed in Regular Civil Suit No.320 of 2012. In such set of facts, no prima facie case is made out by plaintiffs as well as no balance of convenience lies in favour of plaintiffs. So far as irreparable loss is concerned, if the defendants are restrained by way of injunction as prayed therein, then great prejudice will be caused to defendants, for the simple reason that already by order of the Tahasildar, the Circle Officer has removed obstruction from Sarbandh of land Gat No.138 & 13 and get it cleared the way on Sarbandh to go to Vasti of defendants. I do find merits in the appeal and therefore, interference is necessary in the impugned order below Exh.5 dated 3/12/2018, which is contrary to the well established principles of law. Accordingly, I answer point No.1 to 3 in negative, point no.4 in affirmative and to the point no.5, following order is passed.

ORDER

1. *Misc. Civil Appeal No.40 of 2018 is hereby allowed.*
2. *The impugned order below Exh.5 in Regular Civil Suit No.258 of 2018 dated 3/12/2018 passed by the Ld. Jt. Civil Judge, Jr. Dn., Vaduj is hereby set aside.*
3. *Application Exh.5 in R.C.S. No.258/2012 stands rejected.”*

6. Even if some credence is to be given to the contention of Mr.Raktate that the petitioners were not a party to R.C.S. No.320/2012, the fact remains that there is an order made under the Mamlatdar Courts Act against the petitioners, though the said order is appealed against, admittedly, there is no interim relief granted in such appeal. As if this is not enough, there is on record a panchanama dated October 31, 2018 which *prima facie* indicates that the Circle Officer, Vaduj has personally implemented the order of the Tahasildar by removing the obstructions from the way.

7. In the aforesaid circumstances, there is no error in exercise of discretion by the Appeal Court. The Appeal Court has correctly held that in such circumstances, it cannot be said that the petitioners have made out a *prima facie case* or that the balance of convenience is in favour of the petitioners to grant any interim relief.

8. The findings about the existence of the road and user of the same are only *prima facie*. In the course of the trial, it might be possible for the petitioners to establish that the contentions of the respondents

are incorrect and false. While deciding the civil suit, the Civil Court will obviously not be bound by any of the findings in the order made by the Tahsildar under the Mamlatdar Courts Act, since civil suit is a substantive proceeding. However, at the ad-interim stage, such orders cannot be simply brushed aside for determining whether the party has made out a *prima facie* case or not. This is precisely what the Appeal Court has done in the present case. Thus, even if the circumstances relating to the judgment and decree under R.C.S. No.320/2012 is to be kept aside, it cannot be said that the petitioners have made out a *prima facie* case or in any case that the balance of convenience to grant interim relief in favour of the petitioners.

9. For all the aforesaid reasons, there is no case made out for interfering with the impugned order. The writ petition is, therefore, dismissed.

10. However, it is clarified that the observations in the orders made by the trial Court, Appeal Court or this Court need not be taken into consideration by the learned trial Judge while deciding the suit on its own merits and in accordance with law, after the parties have led their evidence. So also, the observations made in the order under the the Mamlatdar Courts Act.

11. The suit to be decided on its own merits and in accordance with law based upon the evidence which the parties lead in the suit.

12. With the aforesaid clarifications, therefore, this petition is dismissed. There shall be no order as to costs.

13. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)