

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6133 OF 2019

(GAJANAN SITARAM SHEWALE...VS.. DAULAT LAXMAN DHORE & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.R.Tekade, Advocate for Petitioner.
Shri R.D.Karode, Advocate for Respondent Nos. 1 & 2.
Shri K.L.Dharmadhikari, A.G.P. for Respondent Nos. 3 & 4.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 05, 2019.

Heard.

In civil suit filed by the petitioner/plaintiff against the respondents/defendants praying for declaration that the order passed in Revenue Case No.LND-10/Swarkhed/02/2017-18 is illegal and shall be set aside and for permanent injunction restraining the defendant Nos.1 and 2 from going through the field of the plaintiff, the plaintiff had filed application under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking temporary injunction. This application came to be dismissed by the trial Court and the appeal filed by the petitioner/ plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure is also dismissed by the learned District Judge. The subordinate Courts have recorded *prima-facie* finding that except for the way carved out as per the order passed in Revenue Case No.LND-10/Swarkhed/02/2017-18 there is no other way for the defendant Nos. 1 and 2 to approach their field. Considering the grievance of the plaintiff that if the defendant Nos. 1 and 2 are permitted to use the disputed way, it would cause damage to the crops

in his field, the learned trial Judge has directed the defendant Nos. 1 and 2 to deposit Rs.15,000/- as security for compensation to the plaintiff if he succeeds in the civil suit. The petitioner has not been able to point out that any other alternate way exists to enable the defendant Nos. 1 and 2 to approach their field. The other points raised by the petitioner about legality of the order passed in Revenue Case No.LND-10/Swarkhed/ 02/2017-18 cannot be examined at this stage as adjudication is *subjudice* before the trial Court.

After going through the facts of the case and the impugned orders, I find that the subordinate Courts have rightly exercised jurisdiction vested in them and have not committed any illegality which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

Considering the nature of controversy, the trial Court is directed to expedite the civil suit and decide it till 16th March 2020.

JUDGE