

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5552 OF 2016

Maksuda Parvin w/o Jamir Ahamad, Tah. Khamgaon, Dist. Buldhana and ors.

-vs-

Dhyaneshwar s/o Bhagwan Ingle, Tah. Khamgaon, Dist. Buldhana and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. P. Masurkar, Advocate for petitioners.
Shri Agrawal, Advocate with Shri S. V. Sirpurkar,
Advocate for respondent No.1.
Shri Syed Shahid, Advocate for respondent Nos.2 to 4.

CORAM : A.S.CHANDURKAR, J.

DATE : July 16, 2019

The order passed by the appellate Court in the miscellaneous appeal filed by the original defendant No.1 is the subject matter of challenge in the present writ petition.

The respondent No.1-plaintiff has filed civil suit seeking declaration that the plaintiff had a right of way to approach Gat No.8 by using the traditional cart way from Gat Nos.367, 368 and 370. These lands were owned by the defendant Nos.1 to 6. An order passed by the Sub-Divisional Officer on 05/08/2013 remanding the proceedings initiated under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, the Code) was also challenged in the said civil suit. The plaintiff had filed an application for temporary injunction. The trial Court after considering the documents on record allowed that application on 06/12/2014 and permitted the plaintiff to approach his field from the North-South boundaries of Gat Nos.367, 368 and

370. A further direction was given that this way should not be obstructed by the defendants. In the appeal preferred by the defendant No.1 the order passed by the trial Court was partly modified by directing the plaintiff to use the cart way from the boundaries of the defendants' field and also to ensure that no damage would be caused to the standing crops. The defendant not being satisfied by said order has challenged the same.

2. The learned counsel for the petitioners submitted that since a way was available to the plaintiff which was customary in nature it was not necessary for the Courts to have permitted the plaintiff to approach his field from the boundaries of Gat Nos.367, 368 and 370. According to him use of this way would result in damage to the crops and hence such injunction did not deserve to be granted. It was further submitted that initially the Tahsildar on 21/06/2002 had granted right of way to the brother of the plaintiff when the fields were being jointly cultivated and hence there was no reason for the plaintiff to again initiate fresh proceedings under Section 143 of the Code.

3. On behalf of the respondent No.1 the impugned orders are supported. It is submitted that the appellate Court has referred to the map prepared by the Court Commissioner which was at Exhibit-47. It was found that the way proposed could not be used practically as the cart way was about 10-15 ft deep. On the basis of orders dated 21/06/2002 and 28/06/2013 the trial Court on finding a prima facie case allowed the application for injunction. It

was further submitted that the plaintiff was taking care that the crops of the defendants would not be damaged.

4. On hearing the learned counsel for the parties and on perusing the material on record it is seen that the appellate Court has referred to two maps which were placed on record. It was found that the way proposed by the Commissioner could not be used practically and hence it permitted the plaintiff to approach his field from the Eastern boundaries of Gat Nos.367, 368 and 370. An additional direction to ensure that the crops of the defendants would not damage also came to be issued. In the light of earlier orders passed by the Tahsildar on 21/06/2002 and 28/06/2013 the discretion exercised in this regard is based on material available on record. It therefore cannot be said that such exercise of discretion was not warranted.

The appellate Court has passed order on 02/11/2015. The suit was filed in the year 2013 and it is stated that it is at the stage of recording of evidence. In these facts therefore, I do not find any reason to interfere with the impugned orders. However the proceedings in R.C.S. No.02/2014 are expedited. The trial Court shall endeavor to decide the suit by the end of December 2019. It is clarified that the trial Court shall not be influenced by any observations made by the appellate Court or by this Court while deciding the proceedings.

The writ petition is dismissed. No costs.

JUDGE