

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3471 OF 2020

RAMCHANDRA SUKDEO CHOPDE AND OTHERS
VERSUS
ARUN GOVINDA FIRKE AND OTHERS

Mr.J.M.Wagh, Advocate for the petitioners.
Mr.V.P.Patil, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/03/2020

PER COURT :

1. The petitioners, who are original defendants in RCS No.104/2019, are aggrieved by the concurrent findings delivered by the Trial Court dated 09/08/2019 and by the judgment of the Appellate Court dated 09/10/2019.

2. I have heard the learned Advocates for the respective sides extensively. With their assistance, I have gone through the voluminous record available in the petition paper book. There are in all 4 maps available on record and each appears to be contradictory with each others.

3. The petitioners had approached the Tahsildar under Section 5(2) of the Mamlatdars Court's Act, 1906 seeking removal of obstacles created by the original sole respondent Pralhad Ramkrushna Chaudhari. By order dated 27/06/2014, the *Wahiwat* Road on the North side of Gat No.40 was opened up upto Gat No.80 from the *Bandh* between the lands. The petitioners, therefore, were permitted to use a path adjacent to Gat No.79 to reach Gat No.80.

4. Respondent No.1 herein Arun Govind filed an application before the Revisional authority when Pralhad Ramkrushna moved a revision u/s 23(2) . He prayed that he was not arrayed as a respondent before the Tahsildar and the matter may be remanded to the Tahsildar so that he could be heard to the extent of his land Gat No.79. The Revisional Authority rejected the revision application, which prompted Arun Govind, respondent No.1 to prefer RCS No.104/2019. By an order dated 09/08/2019, the Trial Court restrained the petitioners/defendants from using the western boundary of Gat No.79 on the ground that the Tahsildar had wrongly granted that path to these petitioners. The petitioners approached the First Appellate Court in MCA No.40/2019 and by the impugned judgment dated 09/10/2019, the Misc.Appeal was dismissed.

5. As I heard the learned Advocates for the litigating sides at length, I found that there are contradictory maps placed on record coupled with the allegation of the petitioners that the original plaintiff has manipulated a map and placed it before the Appellate Court for the first time. When called upon to state as to whether these petitioners had pointed out to the Appellate Court that the plaintiff has tampered with a map and placed the same before the Appellate Court, it is submitted that the petitioners realized the said tampering while preparing this writ petition.

6. It is also canvassed that the fresh map handed across the bar to the Appellate Court was referred to in paragraph No.18 of the impugned judgment. I do not find any such observations in paragraph No.18 which would indicate that the plaintiff suddenly produced a new map before the Appellate Court and tendered it across the bar.

7. I have gone through the impugned order of the Trial Court and the judgment of the Appellate Court, threadbare. Allegations of tampering of a map without there being any such pleading before the Trial Court or the Appellate Court, cannot be considered by this Court in its supervisory jurisdiction. Both the Courts below have

relied on a village map sanctioned by the competent revenue authority, which discloses that an alternate way is available for the petitioners.

8. Considering the above, I do not find that the supervisory jurisdiction of this Court can be invoked on disputed new issues, being raised for the first time in the writ petition, so as to brand the impugned orders as being perverse or erroneous. This petition, being devoid of merit, is therefore dismissed.

9. In the event, the petitioners desire to avail of a remedy as regards the allegation of tampering of the map by the original plaintiff, they are at liberty to do so as may be permissible in Law.

(Ravindra V.Ghuge, J.)