

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12782 OF 2019

Sulochanabai Vishwanath Shivane

...Petitioner

versus

Rambilas Pandurang Loya and others

...Respondents

.....
Mr. Ameya N. Sabnis, advocate for the petitioner
Mr. S. B. Dastgar, advocate for respondent Nos. 1 to 4
.....

CORAM : V. K. JADHAV, J.
DATED : 3rd FEBRUARY, 2020

ORDER :-

1. By consent of the parties, heard finally at admission stage.
2. By way of present writ petition, the petitioner-original defendant is challenging the legality and validity of the judgment and order dated 19.7.2019 passed by the learned District Judge-3, Latur in Misc. Civil Appeal No. 36 of 2016 thereby confirming the order of granting temporary injunction (Exh.5) in the suit instituted by the respondents-original plaintiffs.
3. The subject matter of the suit is a road situated towards eastern side of the area owned by the plaintiffs from and out of the land survey No. 173. It is a part of record that various areas of land survey No. 173 was purchased by one S.B. Agroya and S.V. Dadge in the name of their partnership firm by name Agroya and Dadge Associates. The original

owner of the property had prepared kaccha lay out for the said survey number. The said partnership firm laid plots over some of the area of the land survey No. 173. Deceased Pandurang Loya had purchased 1 acre and 24 Are land from one Sushiladevi Balkishan Agroya and Sulochana Vaijinath Dadge under registered sale deed bearing day book No. 3046/1995 for valuable consideration of Rs.2,00,000/-. The said land is divided into two pieces, one is of 12 Are and another is of 52 Are. It is the case of the plaintiffs that towards eastern side of the said land, there is 20 ft. width road, south north in direction (suit road). Thereafter, again in the year 2006 said Pandurang Loya had purchased 53.69 R land from land survey No. 173. The plaintiffs had constructed one warehouse and compound wall to the entire land owned by them. The plaintiffs have also converted the said land for non agricultural use as per the N.A. order passed by the Sub Divisional Officer, Latur. The petitioner-original defendant represented herself as owner of plot Nos. 15, 16 and 17, which are situated towards eastern side of the land of the plaintiffs. The petitioner-defendant had purchased the plots out of land survey No. 173 from the said partnership firm under registered sale deed bearing day book No.758/1992. It is the case of the plaintiffs that even in the said sale deed towards western side, 6 meter road in width is shown. It is the case of the plaintiffs that the defendant started obstructing and therefore, they constrained to institute the suit bearing R.C.S. No. 546 of 2016 for perpetual injunction and also filed an application Exh.5 for issuance of temporary injunction. After hearing both sides, the learned Joint Civil Judge, Junior Division, Latur by order

dated 27.2.2018 allowed the application and restrained the defendant temporarily from encroaching over the suit road till decision of the suit. Being aggrieved by the same, the petitioner-defendant has preferred Misc. Civil Appeal No. 36 of 2018 and the learned District Judge-3, Latur by judgment and order dated 19.7.2019 dismissed the appeal. Hence, this writ petition.

4. Learned counsel for the petitioner-defendant submits that the petitioner has purchased the land as per the Kaccha lay out number and the respondents-plaintiffs have purchased the land with open space and road thereunder. Learned counsel submits that the alleged road of 20 feet in width as alleged in the plaint is not in existence. The respondents-plaintiffs are in possession of the excess area than the area purchased by them. Even the respondents-plaintiffs have constructed compound wall by encroaching upon the portion of the road. Learned counsel submits that the approach of the trial court is erroneous. The trial court has observed that it is a case of customary easement in absence of any pleading to that effect. The respondents-plaintiffs have purchased the property as an agricultural land and therefore, no relief could have been granted to the respondents-plaintiffs on the basis of such sale deed. The respondents-plaintiffs have failed to prove any prima facie case and balance of convenience does not lie in favour of the respondents-plaintiffs. There is no road in existence towards east side of the land owned by the plaintiffs as described in para 1 of the plaint. There is no authorized lay out plan on record,

which is accepted by the town planner. Mere mentioning of any right in title-deeds does not create any interest in favour of a party. Learned counsel thus submits that, the impugned orders are liable to be quashed and set aside and the application Exh.5 may be rejected.

5. Learned counsel for the respondents-plaintiffs submits that there is 20 ft road in width situated on the eastern side of the land purchased by deceased Pandurang Loya. The suit road is situated on the western side of the plot owned by defendant and one Mayadevi Agrawal. It is the case of the plaintiffs that the defendant is owner of plot Nos. 15 to 17 and all these plots were purchased from the said partnership firm. In the sale deed of the defendant, 6 meter road in width is mentioned towards western side i.e. suit road. All the adjacent land owners are using the said road since long. However, the petitioner-defendant and her husband are obstructing the plaintiffs from using the suit road. Both the courts below have thus rightly allowed the application Exh.5. There is no substance in this writ petition and the writ petition is liable to be dismissed.

6. I have heard learned counsel for the respective parties. With their able assistance, I have perused the memo of petition, annexures thereto and the impugned orders passed by the lower courts.

7. On perusal of the plaint, it appears that the plaintiffs are the legal heirs of deceased Pandurang Loya. Deceased Pandurang Loya in

his life time had purchased the suit land in the year 1995 and 2006 respectively. Both the sale deeds are part of record so also the sale deeds of the defendant. It prima facie shows that there is 20 ft road in width situated on the eastern side of the land purchased by deceased Pandurang Loya. The defendant never challenged the boundaries mentioned in her sale deed since 1992 till filing of the written statement. The petitioner-defendant in her written statement has denied the existence of any road. Both the courts below have prima facie considered the existence of the suit road, as mentioned in the sale deeds. It has been alleged that defendant is trying to make construction on the suit way and in that case, the plaintiffs will have to face irreparable loss. Thus, the balance of convenience certainly lies in favour of the respondents-plaintiffs. I do not find any fault in the orders passed by the courts below. There is no substance in this writ petition. The writ petition is liable to be dismissed. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)

rlj/