

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12469 OF 2018

Shobha Vitthal Jagtap and Ors.	..Petitioners
Vs.	
Sudam Mahadeo Jagtap and Ors.	..Respondents

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Mr. S. T. Bhosale, Advocate for Petitioners.
Mr. Prasad Kulkarni, Advocate for Respondent No.1.
Mr. A. R. Metkari, AGP for Respondent Nos.6 and 7/ State.

**CORAM : C.V. BHADANG, J.
DATE : 4th MARCH, 2020**

PC.

. The challenge in this petition, is to the concurrent finding of the authorities below thereby conceding a right of way to the respondents under Section 5 of the Mamlatdar's Court's Act, 1906 ('Act' for short). It appears that this is the second round of litigation between the parties, on the issue, before this Court. Earlier the petitioner had approached this Court in Writ Petition No.3021/2018 which was decided by this Court on 26/3/2018. This Court on the basis of the decision in the case of **Vilas G. Bhujbal & Ors. Vs. Sou. Pushpa Chandrakant Dabhade & Ors. in Writ Petition No.11598 of 2014 decided on 11/12/2017** has held that the Sub-Divisional Officer was not competent to entertain the revision application under Section 23(2A) of the said Act. In that view of the matter, this Court remitted the revision application back to the file of learned Collector Solapur for deciding it afresh on its own merits and in accordance with law. It is necessary to note that this Court continued the interim protection which was in force during the

pendency of the revision application before the Sub-Divisional Officer for a period of two weeks.

3. On hearing the learned counsel for the parties, prima facie, it appears that there is a document which is executed on a stamp paper of Rs.20/-, on 2/9/2000, in which according to the respondents, the petitioners have undertaken not to create any obstruction, in the said road / access used by the respondents. On the contrary, the learned counsel for the petitioner points out that the said document is not properly stamped and is not even registered. He further points out that the said document is subject matter of challenge before the competent Civil Court in regular Civil Suit No.384/2018. He submits that there is an application for injunction filed in the said suit which is pending.

4. Considering the over all circumstances and having gone through the impugned order passed by the learned Mamlatdar, which has been confirmed by the Revisional Court, I do not find that any case for interference is made out. However, this shall be subject to any order, that may be passed by the competent Civil Court in the aforesaid suit or any other civil action initiated by the petitioner, before the competent Civil Court pertaining to the said access.

5. Needless to mention that Civil Court shall decide the suit on its own merits and without being influenced by the impugned orders which are passed by the authorities under the said Act.

6. All the rival contentions of the parties are left open.

7. The ad-interim relief granted by this Court by order dated 26/3/2018 in Writ Petition No.3021/2018 shall continue to operate for a period of four weeks from today.

8. The petition is disposed of with no order as to costs.

C.V. BHADANG, J.