

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 159 of 2018
WITH
CIVIL APPLICATION NO. 1787 of 2016
IN
SECOND APPEAL NO. 159 OF 2018**

Sharada Balkrishna Mane thru
POA Balkrishna B. Mane .. Appellant
Versus
Ananda Ramu Shinde & ors .. Respondents

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Mr. Tejesh Dande with Bharat Gadhani, Vishal Navale, Vaibhav Kulkarni I/b Tejesh Dande & Associates for the appellant.
Mr. T.S. Ingale with Tejas Hilge for respondents.

CORAM: BHARATI DANGRE, J.

DATED : 25th FEBRUARY, 2020.

P.C:-

1 The appellant, owner of 37.5 sq yards land situated in the western side in Gat No.576 in village Madilge Budruk, Taluka Bhudargad, District Kolhapur approached the Civil Judge, Sr. Division, Kolhapur calling in question the order passed by the Tahsildar under the Mamlatdar Court Act and alleged that the said order is without authority and there is no road in existence in

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the suit property and sought a declaration to that effect against the defendants.

2 When the Suit was filed, the Civil Judge, Sr. Division, framed the very first issue “Whether the Plaintiff proved that the order passed by the defendant Tahsildar is illegal and void *ab initio*”.

3 The second issue as to whether the plaintiff proved that no road pass through the said land was also a determinative issue and both the issues based on the reasons contained from paragraph no.11 onwards are answered in the affirmative and it was declared that there is no road passing through the Suit property. The order of the Tahsildar was declared as illegal and void *ab initio* and the defendants were perpetually restrained from obstructing possession of the plaintiffs over the suit property without following due process of law.

4 In an Appeal preferred by the defendants to the District Judge, Kolhapur in form of Regular Civil Appeal No.400 of 2012, the Appellate Court was confronted with an issue whether the decision given by the Mamlatdar in exercise of jurisdiction under Section 85 of the Mamlatdars Court Act is *non est* and void. The Appellate Court sieved the factual material

placed before the Court; which of course revolved around the entire set of documents which were produced before the Mamlatdar. This included number of photographs which indicated towards the existence of a road and also further divulged that the way was dug up and brought under cultivation. Based on the factual material the Mamlatdar had proceeded under sub-section(2) of Section 5 of the Act and before the Mamlatdar even the appellant had participated and tendered her evidence which resulted into an order dated 12th December 2003. On this round being over, the appellant filed a Revision Application before the Sub-Divisional Officer, Radhanagari which partly allowed the application and remanded the matter back for fresh inquiry.

5 Before the inquiry could be completed, the proceedings came to be interjected by filing the suit to which a reference is made above. As pointed out the very first issue framed by the Trial Court was whether the order of Mamlatdar which was passed in 2005 is correct or it is void.

6 Construing the material available on record including a report of the Circle Officer who had paid visit to the site, the report being contained in form of Exhibit-164 which indicated that a way existed through field No.576 and also accepting the evidence tendered by the appellant herself before the Mamlatdar

where she admitted the existence of a road through the said Survey number, the Appellate Court returned a finding that the two issues answered in the affirmative were erroneously decided. Resultantly, the Mamlatdar was held to be justified in passing the order dated 2nd March 2006 and since the finding that there was no right of way as was claimed and recorded by the Trial Court was an erroneous finding, the same was rightly set aside by the Appellate Court by its judgment dated 24th August 2016.

7 No substantial question of law arises in the finding of fact recorded by the two Courts below nor any substantial law is to be found in the Memo of Appeal which call for an indulgence by this Court in exercise of its appellate power. In absence of any substantial question of law being discerned in the present Memorandum of Appeal, the Appeal deserves to be dismissed. The judgment of the District Judge, Kolhapur in RCA NO.400 of 2012 dated 24th August 2016 is upheld.

SMT. BHARATI DANGRE, J