

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6338 OF 2021

1. Babasaheb s/o Dagadu Agre,
Age : 46 years, Occu. Agri.
2. Balasaheb s/o Dagadu Agre,
Age : 49 years, Occu. Agri.
3. Vasant s/o Dagadu Agre,
Age : 51 years, Occu. Agri.
4. Dropaabai w/o Dagadu Agre,
Age : 71 years, Occu. Agri.
5. Suresh s/o Dagadu Agre,
Age : 44 years, Occu. Agri.

Petitioners No.2 to 5 through their
General Poer of Attorney i.e.
Petitioner No.1 Babasaheb Dagdu Agre

All r/o Ekrukhe, Tq. Rahata,
District Ahmednagar

PETITIONERS
(Orig. Defendants)

VERSUS

1. Macchindra s/o Dagadu Abhale,
Age : 56 years, Occu. Agri.
2. Datta s/o Machindra Abhale,
Age : 27 years, Occu. Agri.

Both r/o Ekrukhe, Tq. Rahata,
District Ahmednagar

RESPONDENTS
(Orig.Plaintiffs)

3. The Circle Officer,
Shirdi, Dist. Ahmednagar

RESPONDENT

AND

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Petitioners No.2 to 5 through their
General Poer of Attorney i.e.
Petitioner No.1 Babasaheb Dagdu Agre

All r/o Ekrukhe, Tq. Rahata,
District Ahmednagar

PETITIONERS
(Orig. Defendants/
Plaintiffs in
counter claim)

VERSUS

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Both r/o Ekrukhe, Tq. Rahata,
District Ahmednagar

RESPONDENTS
(Orig.Plaintiffs)

3. The Circle Officer,
Shirdi, Dist. Ahmednagar

RESPONDENT

Mr. Sachin S. Deshmukh, Advocate for the petitioners
in both Writ Petitions
Mr. P.B. Shirsath, Advocate for respondent Nos.1 and 2
in both Writ Petitions
Mr. S.W. Munde, A.G.P. for respondent No.3 in
both Writ Petitions

CORAM : MANGESH S. PATIL, J.

DATE OF JUDGMENT RESERVED : 17.08.2021
DATE OF JUDGMENT PRONOUNCED : 20.08.2021

COMMON JUDGMENT :

Heard.

2. Rule in both the petitions. Rule is made returnable forthwith. Learned Advocate Mr. P.B. Shirsath waives service for Respondent Nos.1 and 2 and the learned A.G.P waives service for respondent No. 3. With the consent of both the sides, the petitions are heard finally at the stage of admission and are being disposed of by this common judgment.

3. These matters arise out of a common order passed by the learned Civil Judge, Junior Division in Regular Civil Suit No.351 of 2018 filed by respondent Nos.1 and 2, claiming declaration that the petitioners do not have any right to use any portion of the suit property being a portion admeasuring 40 Ares of the western side from their land Gut No.541, totally admeasuring 1 Hectare 42 Ares of village Ekrukhe, Taluka Rahata and restraining the petitioners from entering into the suit property. By way of application (Exh-5), the respondents claimed temporary injunction in terms of the main relief restraining the petitioners from entering into their lands.

4. The petitioners contested the suit by filing written statement-

cum-counter claim. They asserted that there exists a public way which passes through the respondents' suit property. They have been using it for number of years and the respondents were obstructing it. Even they claim a declaration regarding existence of way as asserted by them and seek perpetual injunction. By filing application (Exh-10), even they claimed temporary injunction.

5. The learned Civil Judge, by the common order, rejected both the applications. Both the sides preferred separate Misc. Appeals. By the impugned judgment and order, the learned Additional District Judge allowed the appeal of the respondents and granted them temporary injunction whereas dismissed the petitioners' appeal.

6. Mr. S.S. Deshmukh, learned Advocate for the petitioners would submit that the approach of the two courts below to the extent of refusing to recognize the road/way asserted by the petitioners is wholly incorrect. There was a record in the form of measurement book showing that in fact the Zilla Parishad had spent for laying the road being claimed by the petitioners. Even the respondents admitted, though tentatively, that the petitioners have been using some portion of the respondents' suit property for approaching the canal and there was no sufficient and cogent reason for the two courts below to refuse to grant temporary injunction to the petitioners.

7. The learned Advocate would further submit that though the

learned Civil Judge had rightly rejected the respondents' application (Exh-5) with cogent and convincing reasons, the learned Judge of the Appellate Court, by resorting to scrutiny afresh, has reached an independent conclusion while allowing their appeal and application (Exh-5). The learned Advocate would point out that the learned Judge of the Appellate Court by referring to the photographs produced on the record has concluded that the way being admitted by the respondents is, in fact, a narrow lane. The whole approach of the Appellate Court in confirming the rejection of their application (Exh-10) and allowing the respondents' application (Exh-5) is grossly erroneous and may be quashed and set aside.

8. Per contra, Mr. P.B. Shirsath, learned Advocate for respondent Nos.1 and 2, submits that so far as the petitioners' application (Exh-10) is concerned, there is concurrent finding of the two courts below refusing to grant temporary injunction to them and there is no reason to cause any interference in exercise of the writ jurisdiction.

9. The learned Advocate would submit that so far as the observations of the Appellate Court with regard to the respondents' request for grant of temporary injunction are concerned, the learned Judge has rightly pointed out that the road being claimed by the petitioners is not in existence. The photographs were on the record. He could easily notice that the way being claimed by the petitioners is, in fact, not a public way from its appearance and therefore, having seen that the petitioners were bent upon to

assert their right through the land of the respondents, the latter were entitled to temporary injunction.

10. I have carefully considered the rival submissions and perused the orders of the two courts below. Suffice for the purpose to observe that this Court has inherent limitations while deciding a Writ Petition against the orders of the two courts below, which are the fact finding courts. One need not overemphasize that while exercising the writ jurisdiction, this Court is not supposed to substitute its own findings in place of the findings arrived at by the two courts below.

11. Bearing in mind the aforementioned trite proposition, so far as the petitioners' application for temporary injunction (Exh-10) is concerned, the two courts below have been consistent in observing that they have not come out with a clear description regarding the way being claimed by them. Besides, there is no other material to demonstrate existence of any such road/way. They have also concurrently found that the document in the form of measurement book of Zilla Parishad, Ahmednagar does not refer to the road/way being claimed by the petitioners. In view of such concrete and concurrent objective findings, the Writ Petition, which challenges such rejection of the application (Exh-10) is liable to be dismissed.

12. So far as the request of respondents for temporary injunction by way of application (Exh-5) is concerned, as has been rightly pointed out by

the learned Judge of the Appellate Court, the learned Judge of the Trial Court has not assigned cogent and concrete reasons as to why the temporary injunction is to be refused to them.

13. Apart from such state-of-affairs, it is apparent from the reasoning given by the learned Judge of the Appellate Court that going by the topography, there are no signs of existence of any road as being claimed by the petitioners. However, still, they are claiming the way through the respondents' land. Though the learned Judge has not spelt out in so many words, it is apparent that he was alive to the fact that the very conduct of the petitioners in claiming a way through the respondents' suit property was sufficient to draw an inference that the former were bent upon to obstruct latters' possession over their suit property.

14. Again, the learned Judge of the Appellate Court seems to have had an opportunity to go through the photographs to draw an inference that it is only some sort of a narrow lane as against a public way is in existence in the respondents' suit property. The respondents have been fair enough to admit that it is only intermittently, once in a month or so, that the petitioners have been using that way to approach the canal. It is in the light of such circumstances that no exception can be taken much less the observations can be said to be perverse and arbitrary when the learned Judge, in the impugned order, has noticed that the way being claimed through the land of the respondents' suit property is merely a narrow lane and cannot be

regarded as a public road along which the vehicles can pass.

15. It is in the light of such state-of-affairs, the learned Judge of the Appellate Court has taken a plausible view that the respondents would be put to greater hardship and inconvenience than being faced by the petitioners if the temporary injunction as claimed by the former was not granted. In my considered view, the observations made and the conclusions drawn by the Appellate Court cannot be said to be either perverse or arbitrary so as to reverse those in exercise of the writ jurisdiction.

16. Both the Writ Petitions are dismissed. The Rule is discharged.

17. Pending Civil Application No. 4113/2021 in Writ Petition No.6338/2021 and Civil Application No.4451/2021 in Writ Petition No.6339/2021 are disposed of.

[MANGESH S. PATIL]
JUDGE