

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

WRIT PETITION NO.656 OF 2021

Jayant Vasant Kadam & Ors. Petitioners

Vs.

Shantaram Laxman Shinde Respondents
& Ors.

Mr. Shashank Mangale for Petitioners.

Mr. Surel S. Shah for Respondents.

Coram : NITIN W. SAMBRE, J.

Date : 24TH FEBRUARY, 2021

P.C.:

1. This petition is by the original Defendants questioning the order dated 23rd December, 2019 passed by the learned Civil Judge, Junior Division, Chiplun, which order was confirmed on 4th January, 2021 by the learned District Judge-1, Chiplun in Miscellaneous Civil Appeal No.15 of 2020, whereby temporary injunction granted by trial Court came to be confirmed.

2. The case of the Petitioners is, Respondent No 1, Shantaram Laxman Shinde initiated a suit being Regular Civil Suit No. 85 of 2019

thereby praying a decree for removal of encroachment on the road and mandatory injunction not to restrain the Plaintiffs from using the suit road.

3. A prayer for temporary injunction vide order impugned dated 23rd December, 2019 was allowed restraining the Petitioners / Defendants from interfering with peaceful use of road marked in blue colour in the plaint map. A mandatory injunction is also issued thereby directing the Petitioners to remove an impediment created on the road marked in red colour.

4. The aforesaid order came to be confirmed in an appeal being Miscellaneous Civil Appeal No. 15 of 2020 passed by the learned District Judge –1, Chiplun.

5. Learned counsel appearing for the Petitioners-Defendants while inviting attention of this Court to the Sale-Deed dated 9th March, 1994 would urge that in the Sale-Deed executed by the predecessor-in-title of the Petitioners and Defendants, Defendant No.1 was promised some road as was existing and alongwith Sale-Deed, the said rights

were conferred in Respondent No.1. He would then urge that there is no map prescribing the way as mentioned in the Sale-Deed and as such said recitals ought not to have been read to the benefit of Respondent No. 1. The further contention are, no right of way exist to the Plaintiff/ Respondent No. 1 as shown in blue and yellow colours in the map. Apart from above, it is also claimed that the Plaintiff in collusion with Gram Panchayat employees, got done mutation entry in the Gram Panchayat record, however, same is subsequently cancelled. According to the Petitioners only after completion of construction of wall, the objection is raised. The Petitioners submit that there is an alternate road available to Respondent No. 1 from Southern side of his plot, which is regularly used by the parties to the suit. As far as some of the Defendants in Gat No. 3899 are concerned, they have supported the claim of Plaintiff- Respondent No.1. In short, submissions of learned counsel for the Petitioners are, there is no material on record to infer that the Plaintiff has right to use road and no pinpointed existence of same is mentioned in the suit map. As such, judgment in the Goa matter cited in Appellate Court judgment has no application to case in hand.

6. While countering the aforesaid submissions, learned counsel for the Respondents, Shri. Surel Shah would support the order impugned, as according to him, the affidavits of adjoining land owners have supported the case of Plaintiffs. He would rely on the recitals in the Sale-Deed and the Map produced by both the parties, so as to claim that there exists road from Plot No. 165/5 to the suit plot. He would further claimed that there exist road from plot of the Petitioners i.e. Gat No. 165/1/1. He would then claimed that Crime No. 42 of 2019 came to be registered against the Petitioners in the matter of obstruction created by him. Apart from above, he would urge that in view of concurrent findings, the Court should be slow in showing indulgence.

7. Considered rival submissions.

8. The learned Civil Judge, Junior Division, Chiplun while dealing with the issue of grant of an injunction has considered that in Gat No. 165, 10.50 gunthas land was purchased by the Plaintiff and Ajit Mahadik and Vijay Desai on 9th March, 1994. Out of the aforesaid property, the Plaintiff claims plot consistent of 3.50 gunthas. On 9th

December, 1996, Pandu Daji Metkar has given a consent in favour of the Respondent- Plaintiff thereby permitting him to have a right of way from the front side of house of Mr. Palande. The said agreement/ Consent letter dated 9th December, 1996 read with recitals in the Sale-Deed dated 9th March, 1994 prima facie fortifies the case of Respondent No.1 that there exist a way, which is to be used by Respondent No. 1 for entering his plot. Though, learned Counsel for the Petitioners has claimed that easementary right ought not to have been claimed and awarded in favour of Respondent No. 1 based on the judgment in the matter of Goa Industrial Development Corporation and Anr. Vs. Sadhana Builders Private Limited & Ors., reported in 2015 (4) Bombay C.R. 62, what is required to be noted is since 1996 there is a consistent use of the entry way towards plot in question. Apart from above, finding on the easementary rights are only for the purpose of deciding an injunction, however, the Civil Court is required to deal with the same at the fag-end of the suit proceedings after appreciating the pleadings and evidence on record.

9. The documents at serial nos. 7 and 8 i.e. in the Village Forms 26 and 23 produced alongwith Exhibit 5 of the case has justified

the claim of Respondent No.1. Apart from above, an earlier obstruction created by the Petitioners have resulted in registration of F.I.R., in relation to very same road is not in dispute. The existence of road can be inferred from the rival pleadings and evidence of the parties, however, the only dispute at the behest of the Petitioners is the existence of road from Plot of the Defendants from Gat No. 161/1/1. The aforesaid claim of the Defendants-Petitioners is required to be overlooked particularly in view of the fact that the record shows that the road which was used and obstructed by the Petitioners and appropriate criminal proceedings were taken out.

10. In the aforesaid backdrop, the views expressed by both the Courts below based on the pleadings and documentary evidence appears to be a possible view.

11. No palpable error of appreciation of evidence or any illegality or material irregularity could be noticed, which warrant interference in extra ordinary jurisdiction. The petition, as such fails. Dismissed.

(NITIN W. SAMBRE, J.)