

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3523 OF 2021

Motiram Namdeo Kadam And Ors. Petitioners

Vs.

Balasaheb Rangnath Arote & Ors. Respondents

Mr. Shriram S. Kulkarni i/by Mr. Sachin Chavan for Petitioners
Mr. Pratik Rahade for Respondent Nos. 1 to 24
Mr. A.P. Vanarase, AGP for Respondent

Coram : NITIN W. SAMBRE, J.

Date : 30TH JULY, 2021

P.C.:

1. Heard at length Mr. Kulkarni, learned counsel appearing for the Petitioner.

2 Impugned in the petition is an order dated 1st July, 2021 passed by Extra Joint District Judge, Niphad in Miscellaneous Civil Appeal No. 33 of 2021 wherein the judgment and order dated 28th May, 2021 passed by 2nd Joint Civil Judge, Senior Division, Niphad below Exhibit 5 in Regular Civil Suit No. 161 of 2021 came to be confirmed.

3. The facts necessary for deciding the petition are as under :

It appears that the Petitioner-Plaintiff initiated the suit for declaration claiming that the order passed in exercise of powers under Section 5 of Mamlatdar's Court Act dated 26th February, 2021 is not binding on him.

4. According to Mr. Kulkarni, initially Vahivat Proceedings being 15 of 2017 were initiated before the Tahsildar and Tahsildar allowed the said proceedings vide order dated 31st July, 2018. However, the said order came to be set aside on 5th February, 2019, by the Deputy Collector and order of remand was passed. According to Mr. Kulkarni, while aforesaid order was passed by the Tahsildar, reliance was placed on the spot panchanama drawn by the Tahsildar on 19th December, 2017. He would further claim that after the remand, the Tahsildar passed a fresh order thereby rejecting prayer for removal of encroachment moved under Section 5 of the Mamlatdar's Court Act, based on another spot inspection report dated 28th June, 2019. He would also claim that the Tahsildar while rejecting prayer for removal of

an encroachment has considered the spot inspection report dated 28th June, 2019.

5. According to Mr. Kulkarni, spot inspection dated 28th June 2019 supports the case of the Petitioner and that being so the least that was expected was to consider the same by the Courts below and the fact that no evidence was led by the parties to the proceedings before the Tahsildar while dealing with the claim.

6. Learned counsel for the Respondent support the order impugned.,

7. Apart from the fact that the concurrent findings are recorded by the Court below against the Petitioner, it can be noticed that the alleged spot inspection report dated 28th June, 2019 is not produced on record by the Petitioner. The Petitioner has neither placed reliance nor there is a statement made in the petition that he has made every effort to trace and place said report dated 28th June, 2019 on record of both the Courts below so also this Court. As such, the

Petitioner has tried to rely on such document i.e. Spot Inspection Report dated 28th June, 2019, which is neither part of this record or the part of record of Courts below. That being so, both the Courts below, in my opinion were justified in considering the said documents i.e. 2nd spot panchanama dated 28th June, 2019.

8. Apart from above, the case of the Petitioner that the parties have not led any oral evidence need not be gone into at this stage as the order of the authorities, i.e. the Tahsildar or the revisional authority i.e. Deputy Collector in exercise of powers under Mamlatdar Court's Act are always subject to outcome of civil suit.

9. The Petitioners-Plaintiffs purchased part of Gat No. 9 from Pandharinath Kadam vide Sale-Deed dated 11th February, 1987, to the South of which, there is mention about existence of road. The mutation entry No.474 dated 25th September, 1992 at Exhibit 29/15, the affidavit of Ramkisan Pansare dated 2nd April, 2018 at Exhibit 27-A/3, the spot inspection report drawn by Tahsildar on 19th December, 2017 at Exhibit

3/18 in categorical terms establishes the North-South direction road passing through Gat No. 9 i.e. land owned by the Petitioners-Plaintiffs.

10. The spot panchanama dated 19th December, 2017 speaks of existence of road subsequent to Gat No. 9 and the allegations are on 19th November, 2017, the existing road passing through Gat No. 9 was obstructing by falling tree. The affidavit of Ramkisan Pansare at Exhibit 27-A/3 and the photographs placed on record establishes existence of road in favour of the Respondents-Defendants.

11. In my opinion, no case for consideration or showing any indulgence is made out. The Petition fails, dismissed.

12. Mr.Kulkarni, learned counsel for the Petitioner submits that ad-interim protection is operating till today, which needs to be continued as the Petitioner wants to take chance to approach the Apex Court questioning all the three orders i.e. two passed by the Courts below and one by this Court.

13. Considered the prayer made by Mr. Kulkarni. In the interest of justice, in my opinion, since the prayer for asking time of three weeks is reasonable, ad-interim protection is continued for a period of three weeks from today.

14. Shri. Kulkarni, learned counsel appearing for the Petitioners after aforesaid order was dictated submits that the Petitioners are willing to provide alternate road instead of dividing the land Gat No. 9, in two parts, i.e. from boundaries of Gat No.9. It is open for the Petitioners to give such proposal on affidavit before the Court below, who shall deal with the same in accordance with law.

15. The Petition as such stands dismissed.

(NITIN W. SAMBRE, J.)