

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9329 OF 2021

Prakash Namdev Shinde and ors .. Petitioners
Versus
Dhananjay Ramchandra Bhosale .. Respondents

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Mr.Dilip Bodake for the petitioners.
Mr.Vishal Patil for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 21st DECEMBER 2021

P.C:-

1 The petitioner is aggrieved by an order passed by the Appellate Court, on 9/11/2021, in Miscellaneous Civil Appeal No.79/2021, by which the injunction granted by the Civil Judge, Jr. Division, Satara is reversed and the Appeal filed by the respondent came to be allowed.

 The petitioner who is the original plaintiff filed a Regular Civil Suit No.177/21 for permanent injunction and the suit property is described as 'South bound concrete road' which is described as 'Gram Panchayat Road' which is the only way of access to the residents residing on the southern side. On an application for temporary injunction being filed, the learned trial

Judge by recording that the said road is a village road and since it grant access to the villagers, has granted temporary injunction. Pertinent to note that the plaint is accompanied with a sketch describing the south bound concrete road along with the properties of the plaintiff as well as the defendant.

On an Appeal being filed by the respondent, the learned District Judge expressed doubt about the said road being a village road, by reasoning that, though the road finds its mention in Form no.8 in respect of the old Gram Panchayat Property No.285, which is subsequently registered as property no.302, where it is described as '*Sarvajanik Dakshinottar Rasta*', by recording that subsequently the Gram Panchayat record do not find mention about existence of this road, it is recorded that a *prima facie* case has not been established by the plaintiff in respect of the existence of the disputed road.

2 Learned counsel for the petitioner has placed on record a resolution passed by the Gram Panchayat on 29th September 2021 in respect of Subject No.4 where it is clearly recorded that the road find its mention from 1970 to 2010 as a village road. However, from the year 2011, its existence has not been carried forward in the record of Gram Panchayat, which is a technical mistake and the mistake is proposed to be rejected.

3 In the wake of the fact that the said road described in the map appended to the plaint, being a Gram Panchayat road (village road) and since it is not the private property of any party, nonetheless, the defendant, the learned Appellate Court has clearly erred in recording that the plaintiff has not proved *prima facie* existence of the road. The order passed by the Appellate Court, in the wake of the resolution passed by the Gram Panchayat specifically recording the existence of the South bound road as a Gram Panchayat Road, cannot sustain. Necessarily, it is quashed and set aside by restoring the injunction in favour of the plaintiff as granted by Civil Judge, Jr. Division, Satara.

4 Writ Petition is allowed in the aforesaid terms.

Needless to state that once it is found that suit property is a village road, there cannot be any obstruction on the said road and the Gram Panchayat shall take necessary steps to remove the obstruction, if any, to have a free access.

SMT. BHARATI DANGRE, J