

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1161 OF 2021

- 1] Raghoji s/o Kundlik Jatale,
Aged about 67 years,
Occupation-Agriculturist.
- 2] Santosh s/o Raghoji Jatale,
Aged 38 years,
Occupation-Agriculturist.
- 3] Ganesh s/o Raghoji Jatale,
Aged 33 years,
Occupation-Agriculturist.

All R/o. Borala (Jahagir), Tah. Malegaon,
District-Washim.

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Petitioners
(Original Defendants)

.. Versus ..

Gopal s/o Keshao Jatale,
Aged about 66 years,
Occupation-Agriculturist,
R/o. Borala (Jahagir),
Tq. Malegaon,
District-Washim.

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Respondent
(Original Plaintiff)

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Shri V.K. Paliwal, Advocate for the petitioners,
Shri Abhijeet Deshmukh, Advocate for the respondent.

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CORAM : N.B. SURYAWANSHI, J.

RESERVED ON : 15.07.2021.

PRONOUNCED ON : 04.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition filed under Articles 226 and 227 of the Constitution of India challenges the order passed by the learned Joint Civil Judge, Junior Division, Malegaon thereby granting temporary injunction application Exh.5 and the order dated 12.11.2020 passed by the learned District Judge-1, Washim in Misc. Civil Appeal No.32/2020 confirming the said order of the trial Court.

3. The respondent-original plaintiff filed Regular Civil Suit No.41/2018 seeking permanent injunction against the petitioners-original defendants from creating the new way (road) and from disturbing the peaceful possession of the suit property i.e. Gat No.14, ad-measuring 5 H 79 R situated at village Dhorkheda, Tahsil-Malegaon, District-Washim.

4. The plaintiff pleaded that the defendant no.1 is the owner of Gat No.15 adjacent to the suit property which is situated on the southern side of the suit property. On 5.6.2018, the defendants came in the suit property and threatened the plaintiff to create a new way through the suit property and they have tried to keep murum and stones on the suit property. The defendants threatened to create a new road through the suit property. Hence, the plaintiff filed the suit for permanent injunction.

5. Application Exh.5 under Order 39, Rule 1 and 2 of the Code of Civil Procedure was filed by the plaintiff seeking temporary injunction from creating a new way (road). The defendants opposed the suit and temporary injunction application by filing a written statement and raised a counter claim thereby claiming permanent injunction against the plaintiff or anybody claiming through him from obstructing the defendants from approaching their Gat No.15 from Government Pandhan way. The defendants also filed application Exh.12 for temporary injunction.

6. The Trial Court allowed application Exh.5 of the plaintiff and rejected the application Exh.12 filed by the defendants. The defendants challenged the order of the Trial Court by filing Misc. Civil Appeal No.32/2020 in District Court, which was dismissed, hence the petition.

7. The learned advocate for the petitioners-original defendants contended that the trial Court was not justified in allowing application (Exh.5) filed by the respondent-plaintiff and dismissing the application (Exh.12) filed by the petitioners-original defendants. The documents placed on record and the photographs filed by the petitioners were not considered by both the courts below. By placing reliance on the spot inspection report (Annexure-J), it was submitted that the road going to the school through plot no.14 is closed by iron fencing, this aspect is not appreciated by both the courts below. Therefore, the Trial Court has erred in allowing application Exh.5 and rejecting application Exh.12. The Appellate Court has also failed to appreciate the contentions of the petitioners. It was therefore submitted that the petition deserves to be allowed by setting aside both the impugned orders and their application (Exh.12)

may be allowed.

8. *Per contra*, the learned advocate for the respondent-original plaintiff, supported the impugned orders. He stated that the government map is filed on record and it does not show any road on the middle portion of Gat No.14. In the map filed on record, the road and iron fencing is shown. He, therefore, submitted that there is no merit in the petition and the same may be dismissed.

9. Perusal of the map on record shows that there is one road on the northern and eastern boundary of Survey No.7 of Gat No.14, which runs north to east and parallel to the boundary of the suit property. The map does not show any road from the middle portion of Gat No.14. The map was not objected by the defendants. The defendants have failed to file any document to show existence of any road passing through the middle portion of Gat No.14. Though the plaintiff and defendants relied upon two photographs placed on record, they failed to show that the photographs were either of suit property or of Gat No.15. The defendants could not bring on record any document to show that

since last 70-80 years, they were using the proposed road, which according to them, passes through the middle portion of the suit property. The plaintiff therefore established that because of the obstruction of the defendants, he is entitled for injunction, which if not given, he would suffer irreparable loss. The plaintiff therefore made out *prima facie* case in his favour. The Trial Court, after appreciating the contentions of both the sides and after going through the documents on record, has rightly allowed application (Exh.5) filed by the respondent-plaintiff.

10. The Appellate Court, after taking into consideration the spot panchanama and the map prepared by the Circle Officer and Talathi observed that there appears one internal road from the Gat No.14 from Dhorkheda to Borala Pandhan road, but it does not mean that it was meant for Gat No.15 and the defendants cannot insist for allowing them to go from the middle portion of Gat No.14. Nothing is on record to show that the defendants were using the said way from 70-80 years. The revenue documents i.e. map of Survey No.7 and Gat No.14, Tipan Utara do not show any way (road) from Gat No.14. The defendants failed to prove *prima facie* case and balance of

convenience in their favour.

11. After going through the impugned orders, both the courts have given proper reasoning and have applied the criteria of balance of convenience, *prima facie* case and irreparable loss and held in favour of the respondent-plaintiff. Both the courts have recorded concurrent finding of facts on the basis of material on record and no case is made out by the petitioner to interfere in the same in writ jurisdiction. There is no merit in the petition and, therefore, the petition is dismissed with no order as to costs. Rule is discharged.

(N.B. Suryawanshi, J.)