

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4177 OF 2022

**SHRI NATTHU KASHINATH MARATHE AND OTHERS
VERSUS
SHRI RAVINDRA KISAN MARATHE (AABHALE) AND OTHERS**

...
Advocate for Petitioners : Mr. Nilesh N. Desale
Advocate for Respondent Nos. 1 to 3 : Mr. L. V. Sangit
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th APRIL, 2022

PER COURT :

1. This petition filed under Article 226 and 227 of the Constitution of India takes exception to the order passed by the learned Joint Civil Judge Junior Division, Dhule, below Exhibit-5 in R.C.S. No.148/2021 and the order confirming the same passed by the learned District Judge-1, Dhule in Misc. Civil Appeal No.36/2021.

2. Respondents/original plaintiffs by filing R.C.S. No.148/2021 sought injunction against the petitioners/original defendants that, for approaching their respective fields they should not create road from the suit land i.e. Gut No.29 situated at village Velhane, Taluka and District Dhule. Along with the suit temporary

injunction application Exhibit-5 is filed. The same is allowed by the trial Court by restraining the petitioners/defendants from using the suit property as a right to way to approach their land till the final decision of the suit. The appellate Court has confirmed this order. Hence, the present petition.

3. Heard the learned advocate for petitioners and the learned advocate for respondents.

4. The learned advocate for petitioners assailed both the impugned orders stating that by the impugned order passed by the trial Court the petitioners are restrained from using their customary way from *Bandh* of Gut Nos. 26 and 29, so also, the other road which was being used i.e. from the *Bandh* of Gut Nos. 29 and 30. He sought to rely upon the panchanama conducted by the Tahsildar in proceedings filed under Section 5 of the Mamlatdars' Courts Act, in support of his contentions. He, therefore, contends that the petitioners are not in a position to approach their lands due to the temporary injunction granted by the trial Court. He submits that the petitioners are not at all willing to approach their lands from the middle of the suit land i.e Gut No.29. However, they

may be permitted to use the *Bandh* of Gut Nos. 26 and 29 at least, to approach their lands.

5. The learned advocate for respondents, on the other hand, supported the impugned orders contending that, taking advantage of the fact that respondents/original plaintiffs are staying at Nashik, the petitioners damaged their crops by approaching their respective fields from the middle of the suit land i.e. Gut No.29. By relying on the observations of the trial Court he submits that all the petitioners are related *inter se* and they can very well access their respective lands from western boundary of Gut Nos. 26 and 29. But, since the petitioners were using eastern boundary and the middle portion of the suit land for approaching their respective fields, the respondents were constrained to obtain necessary injunction.

6. The record indicates that the petitioners can approach their respective fields from western boundary of the suit land i.e. the boundary between the suit land and Gut No.26. The trial Court was justified in granting injunction against the petitioners restraining them from using the suit land to approach their

respective fields.

7. The learned advocate for petitioners has raised apprehension that the impugned order can be interpreted to mean that the petitioners are also restrained from using eastern boundary of suit land i.e. Gut No.29. The apprehension appears to be well founded as in the description of the suit land given in the plaint the boundaries are mentioned which will be treated as part and parcel of the suit land. In that view of the matter following order would subserve the interest of justice.

8. The writ petition is dismissed. It is made clear that till the final decision of the suit the petitioners will be entitled to use western *Bandh* of the suit land i.e. *Bandh* between land Gut No.29 and Gut No.26 to approach their respective fields.

(NITIN B. SURYAWANSHI, J.)