

PMB

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

WRIT PETITION NO. 6993 OF 2022

Sudham Gendha Nandan and anr. ..Petitioners
VS.
Eknath Narayan Nandan and ors. ..Respondents

Mr. Bhushan U. Deshmukh for petitioners.
Mr. Rupesh Geete i/b. Satyaki Law Associates for the
respondent Nos.1 and 2.

CORAM : M. S. KARNIK, J.

DATE : JULY 22, 2022.

P.C. :

1. Heard learned counsel for the petitioners and learned counsel for the respondent Nos.1 and 2.
2. The petitioners are the original plaintiffs. The plaintiffs are the owners of agricultural land bearing Gat No.29/1. The defendant nos.1 and 2 are the owners of Gat No.29/2. The plaintiffs filed a suit for declaration and injunction restraining the defendants from creating a road through the land Gat No.29/1 owned by the plaintiffs. The trial Court allowed the application at Exhibit 5 and restrained the

defendants from creating a road through the land of the plaintiffs. The defendant Nos.1 and 2 filed an Appeal before the Appellate Court. The Appeal was allowed. The order passed by the trial Court was set aside.

3. Challenging the Appellate Court's order, learned counsel for the petitioners submitted that the Appellate Court has given undue weightage to the order passed by the Mamlatdar and Sub Divisional Officer under the Mamlatdars' Courts Act, 1906 (hereafter "the said Act", for short). According to learned counsel, no finality can be attached to the orders passed under the said Act. Learned counsel next contended that the defendant nos.1 and 2 have sold out their portion of the land bearing Gat No.29/2 to the defendant Nos.3 and 4. Learned counsel contends that it is from this land that the defendant Nos.1 and 2 could have carved out the road to approach their land, instead of insisting for a right of way through the field of the plaintiffs. It is further submitted that there is an alternate road available to approach the agricultural land of the defendant Nos.1 and 2. Learned counsel submits that the

order passed by the trial Court is a well reasoned order which called for no interference in Appeal. He invited my attention to the findings recorded by the trial Court. He lastly contended that issues in the suit are already framed by the trial Court and therefore, at such a juncture, there was no propriety for the Appellate Court to have interfered with the order passed by the trial Court.

4. Learned counsel for the respondent Nos.1 and 2 on the other hand supported the impugned order. He invited my attention to the findings recorded by the Appellate Court.

5. In view of the decision of this Court in **Mohammad Khan s/o Rahim Khan vs. Shankar s/o Maroti Dhage and another**¹, learned counsel for the plaintiffs is justified in contending that no finality can be attached to the orders passed under the said Act. This factor does not further the petitioners case. The Appellate Court has considered the order passed by the Mamlatdars Court having granted access to the defendant Nos.1 and 2's agricultural land from the agricultural field of the plaintiffs, as one of factors in

¹ 2017(3) Mh.L.J. 135

favour of the defendants. The order passed by the Mamlatdar Court is confirmed in Revision. This is one of the circumstances relied on by the Appellate Court.

6. The other circumstance which has been considered by the Appellate Court is the Panchanama dated 29.11.2017. The Appellate Court was of the opinion that there is no alternate approach to the agricultural land of the defendant nos.1 and 2 based on such a Panchanama. What is material to note is that Gat No.29 is an ancestral property of plaintiffs and defendant Nos.1 and 2. On record is a partition deed in respect of Gat No.29 which indicates the existence of cartway to approach the land Gat No.29/2.

7. Having gone through the findings of the Appellate Court, in my opinion, the findings cannot be said to be perverse so as to warrant interference. For good and sufficient reasons, the Appellate Court has interfered with the order passed by the trial Court. The view of the Appellate Court on the basis of the materials available is a possible view. In such circumstances, it is not possible for me to interfere in the exercise of this Court's jurisdiction

under Article 227 of the Constitution of India with the Appellate Court's order. The writ petition is accordingly dismissed. No order as to costs.

8. Needless to mention that the trial Court shall decide the suit on its own merits and on the basis of the evidence adduced without being influenced by any observations made in the order impugned or those made by me in this order.

9. If possible the trial Court may consider expediting the suit.

(M. S. KARNIK, J.)