

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7571 OF 2021

Shankar Pandurang Patil & Ors.

...Petitioners

V/s.

Smt.Surekha Suresh Patil & Ors.

...Respondents

NILAM
SANTOSH
KAMBLE

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Date: 2022.10.07
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Mr.S.B. Shetye for the Petitioners.

Mr.R.M. Gite a/w Mr.Rohit D. Gorade for Respondent Nos.1 to 6.

Mr.S.D. Rayrikar, AGP for the Respondent Nos.7 and 8-State.

CORAM : C.V. BHADANG, J.

DATE : 04 OCTOBER 2022

P.C.

. The challenge in this Petition is to the order dated 13 August 2021 passed by the Sub Divisional Officer, Panhala, Kolhapur in Revision Application No.46 of 2020. By the impugned order the learned Sub Divisional Officer, while dismissing the Revision Application filed by the Petitioner (Original Respondent before the Mamlatdar) has confirmed the order dated 11 March 2020 passed by the learned Mamlatdar under Section 5 of the Mamlatdar Courts Act, 1906, granting injunction in favour of the Respondents in respect of the alleged access of 8 feet width from the boundary of field Survey No.94/2 of Village-Turukwadi-Kotoli, Tahasil-Shahuwadi for approaching field Survey No.94/1 of the Respondents.

2. I have heard learned counsel for the parties.

3. It appears that initially the Respondents had approached the Mamlatdar by filing an Application dated 18 May 2017 in which the Mamlatdar had passed an order dated 3 April 2018 which was challenged by the Petitioners in a Revision Application. That Revision Application was disposed of on 31 December 2018 by granting liberty to the Respondents to file a fresh Application under Section 5. In that view of the matter, the order dated 3 April 2018 passed by the Mamlatdar in the first round of litigation was set aside.

4. The Respondents again approached the learned Mamlatdar under Section 5 of the Mamlatdar Courts Act, in which the impugned order dated 11 March 2020 came to be passed as referred above which order has been confirmed by the Revisional Authority on 13 August 2021.

5. It transpires during the course of hearing that the Petitioner No.1 has filed Civil Suit No.50 of 2017 against Sunil Nathuram Patil and Anil Nathuram Patil for declaration and injunction, which is pending before the Competent Civil Court at Shahuwadi, District-Kolhapur. The disputed access is the subject matter of the said suit. It is further undisputed that the Defendants in the said suit have raised a counter claim. The Petitioner No.1 (The Plaintiff) had applied for grant of temporary injunction

restraining the Defendants therein from using the alleged way/access, which injunction has been refused by the learned Trial Court. The learned counsel for the Petitioner states that the said order is subject matter of challenge in an Appeal.

6. Section 22 of the 1906 Act would make it clear that any such order passed by the Mamlatdar for removal of any impediment etc., is subject to a decree or order to the contrary by Competent Civil Court. The second proviso to Section 22 of the said Act would make it further clear that before the Civil Court the decision of the Mamlatdar shall not be held to be conclusive.

7. Coming to the present case once the Petitioner No.1 has already resorted to the remedy before the Civil Court which is pending before the Competent Court in which temporary injunction is refused to the Petitioner No.1, no case is made out for an interference in the impugned order. The Petition is accordingly dismissed, with no order as to costs.

8. Needless to mention that the learned Civil Court shall decide the suit on its own merits and in accordance with law, without being influenced by the findings recorded by the Mamlatdar as confirmed by the Revisional Authority.

C.V. BHADANG, J.