

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

WRIT PETITION NO.9492 OF 2021

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Akush Dagadu Lohar

..Petitioner

Versus

Audumber Dattu Shelake and Anr.

..Respondents

Mr. Ashok B. Tajane, for the Petitioner.

Mr. Prasad P. Kulkarni, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 9th FEBRUARY, 2022

PC.

1. This petition is by the plaintiff questioning the impugned order dated 25th November, 2021 passed by District Judge-2, Barshi in Misc. Civil Appeal No.29 of 2019 whereby the order passed below Exh.5 in Regular Civil Suit No.593 of 2018 came to be set aside.

2. The facts necessary for deciding the present petition are as under :-

The petitioner was non-applicant/respondent in Case No.55 of 2017 before Mamlatdar proceedings. The Mamlatdar vide order dated 17th July, 2018 enjoined the petitioner from causing any interference in the existing road passing from Southern side of Gat No.551.

3. The petitioner feeling aggrieved, preferred Regular Civil Suit No.593 of 2018 thereby questioning the aforesaid order of Mamlatdar as illegal and sought temporary injunction. The Trial Court vide order dated

22nd February, 2019 injuncted the respondents/defendants from obstructing the possession of the petitioner over the said land out of Gat No.551. However, in appeal by the respondents/defendants the Appellate Court reversed the same, as a consequences of which the order of the Tahsildar has taken effect.

4. Mr. Ashok Tajane, learned counsel for the petitioner would invite attention of this Court to the factual matrix. According to him, Rupesh Shivdas Lohar sold the suit property to one Dattatray Trimbak Mane vide sale-deed dated 29th December, 2014 wherein existence of any road is not mentioned in recitals. He would further claim that Dattatray Trimbak Mane vide sale-deed dated 28th August, 2015 transferred the same to one Audumber Dattu Shelake who is defendant to the present suit. According to him neither the sale-deed executed by Rupesh Shivdas Lohar nor the initial sale-deed executed by Dattatray Trimbak Mane mentions existence of any road or right of way. By way of correction deed the easementary right is sought to be transferred based on which the Appellate Court has vacated the injunction granted by the Trial Court. According to him, in absence of mention about existence of way in the sale-deed executed by Rupesh Shivdas Lohar in favour of Dattatray Trimbak Mane, it cannot be inferred that there exist way passing through the property of the petitioner. That being so, he claims that the order impugned is liable to be reversed. The plea for alternate road is taken out by the petitioner.

5. Mr. Prasad Kulkarni, learned counsel appearing for the respondents would oppose the prayer.

6. Considered submissions.

7. Leave apart the mention of the right of way in the correction-deed, perusal of the order of the Mamlatdar reflects that Spot Panchanama was carried out. In the said Spot Panchanama there is specific mention of existence of road passing through the boundary of the petitioner. The said fact is not disputed by the petitioner. That being so, in my opinion, the Lower Appellate Court was justified in passing the impugned order. As such, in my opinion, no error apparent on the face of the order impugned.

8. As such, petition stands fail, dismissed.

9. Needless to clarify that the Trial Court shall decide the suit uninfluenced by the findings recorded herein-above.

10. Though in the first sale-deed there is no mention of existence of road, however, in the second sale-deed executed by Dattatray Trimbak Mane in favour of Audumber Dattu Shelake there is specific mention of existence of road passing through the property of the petitioner.

[NITIN W. SAMBRE, J.]