

SPChauhan

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

CIVIL APPLICATION NO. 7039 OF 2022
IN
SECOND APPEAL NO. 241 OF 2022

Vinayak Ganpati Kokate and others ... Appellants

Versus

Murlidhar Biru Hajare and others ... Respondents

....
Mr. N.L. Jadhav – Advocate for Appellants
Mr. C.K. Sontakke – Advocate for Respondent Nos. 1 to 4
....

CORAM : GAURI GODSE, J.
DATE : 17th February, 2023

PER COURT :

1. This application is filed for temporary injunction restraining the respondents from interfering and obstructing with possession of the appellants over the suit land.
2. The Second Appeal is admitted by order dated 03rd February, 2023. The Regular Civil Suit No. 216 of 2013, filed by the applicants was decreed by directing the respondents to remove the work done by them from the suit property owned by the appellants. Trial Court passed a decree of injunction restraining the respondents from obstructing possession of the

appellants over the suit property. The first appellate Court allowed the appeal preferred by the respondents / defendants and set aside the decree passed by the trial Court. Hence, the plaintiffs have filed the Second Appeal. Trial Court has recorded a positive finding with respect to the contention of the appellants that there is a pathway in existence which passes through the appellant's property.

3. The first appellate Court has relied upon a map at exhibit 108 as well as Government Resolution dated 04th November, 1987, in support of the finding that there is a pathway existing as shown on the map that passes through the suit property. The first appellate Court has also recorded a finding that the appellants have failed to prove ownership of the entire suit property. The suit property is described by the appellants as land Gut Nos. 153 and 167 more specifically described in the plaint. It appears that there is no dispute raised with respect to the applicants' ownership on the suit property, however, the dispute is only with respect to existence of a pathway passing through the suit property owned by the appellants. Though the first appellate Court has relied upon the village map at exhibit 108 and the Government Resolution, there is no finding

recorded as to in what manner the pathway has been permitted to pass through the property owned by the appellants. Hence, on these questions of law with respect to ownership of the appellants over the suit property, the Second Appeal is admitted by order dated 03rd February, 2023, by framing following substantial question of law :

“i. Whether findings recorded by the first appellate court on the ownership of the suit property of the plaintiff is as per evidence on record ?

ii. Whether parameters laid down in the decision of Hon'ble Supreme Court in the case of Santosh Hazari Vs. Purushottam Tiwari, reported in 2001 AIR (SC) 965, are followed, for reversing the well reasoned findings of the trial court with respect to ownership of the plaintiff over the suit property ?”

4. Learned Advocate appearing for the applicants states that the Trial Court has specifically recorded the findings in favour of the applicants and passed a decree of injunction. The decree of injunction as passed by the Trial Court was in operation since 27th November, 2021, and for the first time was set aside by the impugned judgment dated 16th March, 2022.

5. Learned Advocate further submitted that on 04th May, 2022, this Court had passed an order directing the parties to maintain status quo with respect to the suit property as on 04th May, 2022. He further submitted that the said interim order has continued till date. In such circumstances, he submitted that the order of injunction as prayed in the application be granted, as there is obstruction by the respondents into the suit property which is admittedly owned by the applicants.
6. Learned Advocate appearing for the respondents submitted that the first appellate Court has specifically recorded a finding that there is a pathway existing which passes through the suit property. He submitted that the evidence on record shows that a pathway is in existence since 35 years and there is a decree of injunction granted to the respondents, as the pathway is used by the villagers for more than 35 years. He, therefore, submitted that the respondents have no objection if the order of status quo is continued.
7. Perusal of the impugned judgment, dismissing the suit of the plaintiffs shows that there is no such finding recorded as to whether the pathway is in existence for 35 years as contended

on behalf of the respondents. The finding that is recorded by the first appellate Court is only with respect to the existence of a pathway only on the basis of a map at exhibit 108 supported by Government Resolution dated 04th November, 1987. The first appellate Court has also referred to an admission given by the plaintiffs with respect to existence of a pathway. Hence, on the basis of the admission of the applicants and the map as well as Government Resolution, the decree passed by the Trial Court is set aside. The first appellate Court has also recorded a finding that the applicants or any other persons are not entitled to claim ownership with respect to the pathway.

8. Learned counsel for the respondents agreed that there is in fact no such dispute with respect to the ownership of the appellants over the suit property. However, the only objection is to grant of any injunction on the ground that the pathway is in existence and is used. The applicants ownership over the suit property is not disputed. However, the dispute is on the pathway passing through the applicants property. There is no finding recorded by the first appellate Court with respect to the rights of the respondents to use the pathway as per the map at exhibit 108. Since the ownership of the applicants over the suit property is

not disputed, only on the basis of the village map and Government Resolution it will not be sufficient to hold that there is an existing pathway which can be used by the respondents as a matter of right. There is nothing on record to show any easementary right to use the pathway. There is nothing on record to show that as per the map at exhibit 108 whether the property owned by the applicants was acquired for the purpose of pathway. All these issues with respect to the rights of respondents for using the pathway from the property of the applicants is a question that will be decided in the Second Appeal.

9. Learned counsel for the applicants is right in submitting that the order of status quo would create further litigation. The dispute with respect to the existence of pathway from the applicants' property is yet to be decided in the Second Appeal. Since the decree of injunction passed by the Trial Court was continued during the pendency of the First Appeal and the order of status quo was also passed by this Court on 04th May, 2022, I find it appropriate in the fact and circumstances of the present case to grant interim relief in terms of prayer clause 'b-1' of the Civil Application.

10. For the reasons, stated above Civil Application is allowed in terms of prayer clause 'b-1', which reads thus :

“b-1. Pending hearing and final disposal of Second Appeal Respondents (Original Defendants) their servants or anybody on behalf of them may kindly be restrained to interfere and obstruct, peaceful possession of the Appellants (Original Plaintiffs) over suit land as mentioned in plaint is R.C.S. No.216/2013.”

**[GAURI GODSE]
JUDGE**