

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO.8924 OF 2022

1. Venunath Balasaheb Deshmukh,
Age; 46 years,
2. Arun Balasaheb Deshmukh,
Age; 41 years,
3. Mangal Venunath Deshmukh,
Age; 46 years,
4. Bhausahab Murlidhar Deshmukh,
Age; 66 years,
5. Eknath Murlidhar Deshmukh,
(Since Died on 27.12.2021
Through L.R.) Prakash Eknath
Deshmukh, Age; 50 years,

Occupation of all – Agriculture,
All R/o; Unchakhadak,
Tal. Akole, Dist. Ahmednagar.

...Petitioners
(Orig. Applicants Nos.
1, 2 and Opponent
No. 4 to 6 in Rasta
Case No.26 of 2021).

VERSUS

1. Alka Jaywant Deshmukh,
Age; 41 years,
2. Jayawant Baburao Deshmukh,
Age; 46 years,
3. Balu Baburao Deshmukh,
Age; 56 years,

Occ; of all – Agriculture,
All R/o; Unchakhadak,

Tal. Akole, Dist. Ahmednagar.

...Respondents
(Original Opponents
No. 1 to 3 respectively
in Rasta Case No.
26 of 2021).

4. Tahsildar, Akole, Tq. Akole,
Dist. Ahmednagar.

5. The Sub Divisional Officer,
Sangamner, Dist. Ahmednagar.

...Respondents
(Authorities Mamnadar's
Court Act, 1906.)

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Advocate for Petitioners : Mr.Bhide Vinod Y.

Advocate for Respondent Nos. 1 & 2 : Mr. Bhalerao
Rajendrakumar D.

Advocate for Respondent No. 3 : Mr.Dhongade Madhukar V.
AGP for Respondent Nos. 4 & 5/State : Ms.D.S.Jape

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WITH
CIVIL APPLICATION NO. 5525 OF 2023
IN WP/8924/2022

1. Alka Jaywant Deshmukh,
Age; 41 years,
2. Jayawant Baburao Deshmukh,
Age; 46 years,

Both R/o; Unchakhadak,
Tal. Akole, Dist. Ahmednagar.

...Applicants
(Original Opponents
No. 1 & 2 in Rasta
Case No. 26 of 2021).

VERSUS

1. Venunath Balasaheb Deshmukh,
Age; 46 years, Occ; Agril,
2. Arun Balasaheb Deshmukh,
Age; 41 years, Occ; Agril,

3. Mangal d/oVenunath Deshmukh,
Age; 46 years, Occ; Agril,
4. Bhausahab Murlidhar Deshmukh,
Age; 66 years, Occ; Agril,
5. Eknath Murlidhar Deshmukh,
(Since Died on 27.12.2021
Through L.R.) Prakash Eknath
Deshmukh, Age; 50 years,

Prakash s/o Eknath Deshmukh
Age; 50 years, Occ; Agril.

All R/o; Unchakhadak,
Tal. Akole, Dist. Ahmednagar.

...Non Applicant
(Applicants Nos.
1, 2 and Opponent
No. 4 to 6 in Rasta
Case No.26 of 2021).

6. Balu Baburao Deshmukh,
Age; 56 years, Occ; Agril,
R/o; Unchakhadak, Tq. Akole,
District. Ahmednagar.

(Original Opponent
No. 3 in Rasta Case
No. 26 of 2021).

7. The Tahsildar,
Akole, Tq. Akole,
Dist. Ahmednagar.

5. The Sub Divisional Officer,
Sangamner, Dist. Ahmednagar. ...Non Applicants.

...

Advocate for Applicants : Mr. Bhalerao Rajendrakumar D.

Advocate for the Petitioner in WP : Mr.Bhide Vinod Y.

Advocate for Respondent No. 3 in WP : Mr.Dhongade
Madhukar V.

AGP for Respondent Nos. 4 & 5/State : Ms.D.S.Jape

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CORAM : KISHORE C. SANT, J.

DATE : 02.08.2023.

PER COURT :

1. Heard. Taken for final disposal by consent of the learned Advocate for the parties at the stage of admission.

2. The petitioner Nos. 1 and 2 have approached this Court challenging the judgment and order passed by the learned Sub Divisional Officer, Sangamner dated 05.07.2022 in Revision Application preferred by respondent No. 1 challenging the judgment and order passed by the learned Tahsildar, Akole, District. Ahmednagar allowing the application of petitioner Nos. 1 and 2 under Section 5 of the Mamlatdar's Court Act.

3. The facts in short are that the petitioner Nos. 1 and 2 and respondent Nos. 1 to 3 are having a land adjacent to each other. There was a right of way to the petitioner Nos. 1 and 2 to go to their field from the lands of respondents and specifically from the land of respondent No.1. The said right of way was obstructed by

the respondents and therefore, the proceedings was filed.

4. There is some history to the litigation that in 1989 a Civil Suit was filed bearing R.C.S. No. 189 of 1989 by the predecessor of the respondent Nos. 1 to 3 on one side and respondent Nos. 4 to 6 on the other side. There was compromise that took place in 1996 and that is was recorded. In view of the compromise a right of way was recognized from the boundaries of Survey No. 58/1, 58/4, 58/3 on western side of Survey No. 57/1 and part of 57/1, Survey No. 55/1 and Survey No. 86 on the Eastern side and in between that there was a right of way from the North to East and the same was recognized by the said compromise.

5. The petitioners are also using the said right of way. However, the said right of way was obstructed by respondent No. 4 i.e. the present respondent Nos. 1 to 3. On receipt of directions, the learned Tahsildar conducted the spot panchanama on 11.02.2022. It is recorded that on the road there is obstruction of 90 to 100 feet by way of 'bamboo' on the road between the Survey No. 58/1 and

Survey No. 57/01. This panchanama was prepared in presence of all the parties and there is no dispute about the same. After considering the pleadings of the parties and the spot inspection report, the learned Tahsildar allowed the suit of the petitioner Nos. 1 and 2 directing respondent No. 1 therein to remove the obstruction.

6. Being aggrieved by the judgment and order passed by the Tahsildar dated 17.03.2022, respondent Nos. 1 and 2 approached the learned SDO, Sangamner. The learned SDO mainly considered that already first Civil Suit was filed and the compromise decree is passed and in view of the same this proceedings is not maintainable. It is further observed that it is open for the parties to go for the execution of the compromise decree. The parties in respect of the execution however approached the Mamlatdar's Court.

7. It is the submission of the learned Advocate for the petitioner Nos. 1 and 2 that they were never a party to the Civil Suit and the Civil Suit was only in between the predecessors of defendant Nos. 1 to 3 on one hand and

respondent Nos. 4 to 6 on the other hand. The reference of the decree was given only to show that there is already a way in existence. It is not the case of the petitioner Nos. 1 and 2 that they have acquired a right of way in view of the compromise decree. The learned SDO has wrongly considered this aspect. It is nobody's case that the right of way is given for the first time. Petitioner Nos. 1 and 2 by way of compromise, submits that there is no question of res-judicata.

8. The learned Advocate Mr. Bhalerao vehemently argued the matter and opposes the petition. He submits that Respondent Nos. 1 & 2 also filed affidavit in the petition. He further submits that petitioner Nos. 3, 4 and 5 were parties to the suit and at least they cannot seek right of way under Section 5 of the Mamlatdar's Court Act. He submits that the learned Tahsildar has failed to take into consideration that by way of this application to show his execution decree passed in RCS No. 189 of 89. The machinery of the Mamlatdar under the Mamlatdar's Court Act cannot be used to execute the decree passed by the Civil Court.

9. The learned Advocate Mr. Mote also adopts the arguments of Mr. Bhalerao. However, it is seen that his client did not challenge the judgment before the SDO.

10. The learned AGP also supports the order passed by the learned SDO.

11. Having considered the material on record and the submissions, this Court finds that the panchanama was drawn in presence of the parties and there are signatures appearing on the panchanama and thus there is no dispute about the same. In the said panchanama itself the Tahsildar has observed that there is obstruction by respondent No. 1 to the extent of 90 to 100 feet of the road. In this view the learned Tahsildar had allowed the application. The Tahsildar had also taken into consideration the decree passed by the Civil Court. The decree is also not signed by the original owner of land Survey No. 58/3 etc. and has passed an order.

12. On going through the judgment of the learned SDO, it is found that the learned SDO has mainly considered the provisions of Act and earlier material filed

by respondent Nos. 1 to 3 and 4 to 6. However, it is not considered that the present petitioner Nos. 1 and 2 i.e. the original plaintiffs before the Mamlatdar were not parties to the decree in the said suit. The observations of the learned SDO is thus not correct. The rights of execution of decree and to seek road under Section 5 (2) are the independent proceedings. The pendency of the decision of the Civil Suit between different parties will certainly not bound the persons who are not parties to the said proceedings. It is always open for such persons to approach the Mamlatdar under the provisions of Mamlatdar's Court Act. This Court finds that the learned SDO has thus considered the material available on record and has come to the conclusion that the petitioner Nos. 1 and 2 are trying to execute the decree passed in RCS No. 189 of 1989, when in fact there is no such material to show this. On the contrary, it is seen that the petitioner Nos. 1 and 2 by approaching this Court are seeking enforcement of their rights to use the way under Section 5 (2) of the Mamlatdar's Court Act. Hence following order :

ORDER

- a) The Writ Petition is allowed.
- b) The judgment and order passed by the learned SDO dated 05.07.2022 passed in Revision Application No. 113 of 2022 is quashed and set aside.
- c) The judgment and order passed by the Tahsildar, Sangamner dated 17.03.2022 in Rasta Case No. 2 of 2021 is restored.
- d) In view of the disposal of the Writ Petition, the pending Civil Application No. 5525 of 2023 stands disposed off.

**(KISHORE C. SANT)
JUDGE**

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