

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

WRIT PETITION NO.1544 OF 2023

Mahadev Basappa Shiramgond & Ors. Petitioners

versus

Sadashiv Gangappa Rajmane & Ors. Respondents

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- Mr. Nagesh Y. Chavan, Advocate for Petitioners.

**CORAM : SARANG V. KOTWAL, J.
DATE : 24th APRIL 2023**

P.C. :

1. In this Petition, vide order dated 08/02/2023, the notice was issued to the Respondents. It was clarified in the said order that the Petition would be disposed of at the stage of admission. The office noting shows that all the Respondents are duly served. However, no one appears for them today. Therefore I have heard learned counsel Nagesh Y. Chavan, for the Petitioners for final disposal of the Writ Petition as was observed in the order dated 08/02/2023.

2. The Petitioners were the Original Defendants in Regular Civil Suit No.217 of 2021 before the Civil Judge, Junior Division, Jat. The Petitioners have challenged the clause Nos.2 and 3 of the Appellate Court's order dated 09/02/2022 passed by the District Judge-2, Sangli, in Misc. Civil Appeal No.195/2021 arising out of the impugned order dated 26/10/2021 below Ex.5 passed by the Trial Court. The said suit was filed by the Respondent Nos.1 to 3 who were the Original Plaintiffs.

3. The Petitioners had approached the Tahasildar under the Mamlatdar Court Act for removing the obstruction created by the Respondent Nos.1 to 6 herein. According to the Petitioners there was a road providing access to their Gat No.176 and 278 from the land bearing Gat No.279, 280, 281, 282 at village Kontev Boblad Taluka Jath, Sangli. The Additional Tahasildar, Sangli conducted Panchanama on 24/07/2019. After hearing the parties and after taking into consideration the said Panchanama, learned Tahasildar allowed the Petitioners'

application and the Respondent Nos.1 to 6 herein were directed to remove the tin shed and other obstructions constructed on the road. The said order dated 20/02/2020 was challenged before the Sub-Divisional Officer by the Respondent herein. The said Revision was also dismissed vide order dated 30/08/2021 and the order of the Tahasildar was confirmed. After that, the Respondent Nos.1, 2 and 3 filed the aforementioned suit for cancellation of the order passed by the Tahasildar in the said proceedings and also for perpetual injunction against the present Petitioners from constructing a new road in the Plaintiff's land.

4. The Plaintiffs preferred an interim application vide Ex.5. The said application was allowed vide order dated 26/10/2021 and the interim injunction was granted against the Petitioners and they were restrained from causing obstruction to the peaceful possession of the Plaintiffs over suit property. The said order dated 26/10/2021 was challenged under Misc. Civil Appeal No.195/2021 before the District Judge-2, Sangli, in which the impugned order was passed.

5. Learned counsel for the Petitioners submitted that the learned Appellate Judge held everything in favour of the Petitioners and yet the operative part of the order appears to be in favour of the Plaintiffs/Respondent Nos.1 to 3 herein. The operative part says that the Misc. Civil Appeal No.195/2021 was partly allowed. The order below Ex.5 passed by the Trial Court was modified and both the parties were directed to maintain status-quo in respect of the position appearing in the Panchanama prepared by the learned Tahasildar during the pendency of the suit.

6. Learned counsel emphatically states that there was no occasion to conduct any Panchanama during pendency of the suit. Moreover, learned counsel for the Petitioners also invited my attention to the observations in paragraph No.13 of the impugned order, wherein it is mentioned that :

“However, there is one tin shed that cannot be removed during pendency of the road.”

This sentence also does not clarify the situation. Therefore, there is absolutely no clarification in the order passed by the Appellate Court. Hence it is necessary to remand back the Appeal for fresh consideration.

7. Hence, the following order :

ORDER

- (i) The order dated 09/02/2022 passed by the District Judge-2, Sangli, in Misc. Civil Appeal No.195/2021 is set aside. The said Appeal is remanded back on the file of the learned District Judge-2, Sangli, for fresh consideration.
- (ii) The learned Judge shall give opportunity to both the sides and decide the Appeal afresh without being influenced by the earlier order dated 09/02/2022 passed in Misc. Civil Appeal No.195/2021.
- (iii) With these observations, the Petition is disposed of.

- (iv) The learned Judge is requested to decide the Appeal as expeditiously as possible, as far as within a period of three months.

(SARANG V. KOTWAL, J.)