

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 6574 OF 2022**

Shri. Bhaga B. Bachhav and ors.

...Petitioners

V/s.

Shri. Rangnath D. Khomne and ors.

...Respondents.

Mr. J. D. Khairnar for the Petitioners.

Mr. Rupesh Geete a/w. Mr. Darshan Sahaji i/b Satyaki Law Associates for Respondent Nos.1 to 7 and 9.

Mr. P.G. Sawant, AGP for Respondent Nos.10 and 11.

**CORAM : N.R. BORKAR, J.**  
**DATE : 08.06.2023.**

**P.C. :**

1. The petitioners are the original defendant Nos. 3 to 9 in a suit filed by the respondent Nos. 1 to 9 / original plaintiffs for declaration and injunction. The cause of action for filing the said suit appears to be the order passed by the Tahsildar dated 27 September 2018, purportedly under Section 5 of the Mamlatdar's Courts Act in favour of the petitioners.

2. The trial Court rejected the applications filed by the respondent Nos. 1 to 9 for temporary injunction.

3. By the order impugned, the appellate Court had allowed the appeal filed by the respondent Nos. 1 to 9 against the order of trial Court and granted temporary injunction. The operative order reads thus:

"1] *Appeal is allowed.*

2] *The order made below Exh.5 by the Ld. Joint Civil*

*Judge, S.D. Malegaon in R.C.S. No. 140/2021 on 22.06.2021 is hereby set aside.*

*3] Defendant Nos. 1 to 9 are hereby restrained by temporary injunction from implementation of the order passed by the defendant No.1 in Vahivat Case No. 47/2018 dated 27.09.2018 till the final decision of the suit RCS No. 140 of 2021.*

*4] Cost in cause.*

*5] Informed the Ld. Jt. Civil Judge, S.D. Malegaon accordingly."*

4. In view of Section 22 of the Mamlatdar's Courts Act, the orders passed under the said Act are subservient to the order/decreed passed by the competent Civil Court. The appellate Court, therefore, without being influenced by the order passed by the Tahsildar ought to have independently examined the rival claims made by the parties in relation to right of way to grant or refuse the temporary injunction. However, it appears that the appellate Court had completely misdirected itself and decided the appeal as if it was sitting in appeal over the order passed by the Tahsildar. The order impugned, therefore, cannot be sustained. In the result, the following order is passed.

### **ORDER**

A] The order dated 23 August 2021 passed by the District Judge-3, Malegaon, District Nashik in Miscellaneous Civil Appeal No. 13 of 2021 is hereby set aside;

B] The appellate Court shall decide the Miscellaneous Civil Appeal No. 13 of 2021 afresh as early as possible.

5. The Petition stands disposed of in the aforesaid terms.

**[N.R.BORKAR, J.]**