

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1799 OF 2021

Ruprao Bajirao Amzhare__ Vs. __Haribhau Sampatrao Nandne and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.S.Khushalani, Advocate for petitioner
Mr. R.J.Shinde, Advocate for Respondent No.1
Ms. T. Khan, AGP for Respondent Nos.2 & 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/01/2023

1] Mr. Shinde, learned counsel for respondent No.1 does not dispute the position as indicated in the map at page 70. The map at page 70 would indicate that there is a nallah (N1 to N2) on the western side of Gat no. 534/1 belonging to the plaintiff, which according to the spot inspection report is also borne out. The Respondent No.1 is the owner of Gat no. 535, which has direct approaches from the eastern side and the southern side as indicated in the undisputed map at page 70.

2] In view of the admitted position that 4-5 feet deep nallah flows between road (R1 & R2) and the land of Gat no. 534/1, the existence of a road from point DC appears to be an impossibility. The order of the Tahsildar under Section 5 of the Mamlatdar Courts Act, dated 30.5.2016 (pg.19), itself records that in the cross examination of the plaintiff/Respondent No.1, he has

given a categorical admission that there was no road available from the land of the defendant/petitioner and there was an alternate road also available to him. This position, does not appear to have been considered by the Naib Tahsildar while passing the order dated 30.5.2016, though he takes note of the same in his order (page 34). The revisional authority, while dismissing the revision, also does not appear to have been taken into consideration the above position, considering which both the orders are hereby quashed and set aside and the application under Section 5 filed by the Respondent No.1 is hereby dismissed.

3] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit