

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

Writ Petition (WP) No. 5720 of 2022

Vijay Tryambak Tekale and others

Versus

Tejrao S/o Himmatrao Tekale

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Tejas Deshpande, Advocate for the petitioners

CORAM : ANIL S. KILOR, J.

DATED : 16th JANUARY, 2023.

The challenge raised in the present petition, is to the injunction granted by both the Courts below in favour of the plaintiff to the effect that the defendants, their servants or anybody on their behalf are restrained temporarily from causing obstruction from using the plaintiff to approach his land without due course of law.

2. Both the Courts below namely learned 3rd Joint Civil Judge, Buldhana and learned Adhoc District Judge-1, Buldhana have held that the location of survey No.246 owned by the plaintiff clearly shows that the plaintiff cannot use his land, unless he passes through the defendants' land in Survey No.246 and considering the necessary ingredients of Order XXXIX Rule 1 and 2

of Code of Civil Procedure, both the Courts held in favour of plaintiff and granted injunction against the defendants to the above referred terms.

3. The only argument made in the present petition was that the plaintiff has a remedy under Section 143 of the Maharashtra Land Revenue Code (in short referred as “MLRC”) and unless the inquiry is made by the revenue authorities under Section 143 of MLRC, the relief granted by both the Courts below by way of temporary injunction is not sustainable in the eyes of law.

4. In the circumstances, at this stage it is necessary to refer Section 143 of MLRC, which read thus:

143. Right of way over boundaries

- (1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.
- (2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.
- (3) The Tahsildar’s decision under this Section shall, subject to the provisions of sub-section (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.
- (4) Any person who is aggrieved by a decision of the Tahsildar under this Section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

5. After going through the said provision, I do not find any error committed by the learned Lower Appellate Court, while observing as under:

“..... So far as remedy under Section 143 of the Maharashtra Land Revenue is concerned, it will come into play when there is right of way over boundaries of two survey number. In case in hand, the plaintiff has averred that the way passes through agricultural land of same survey number which was allowed to defendants. It is not way over the boundaries. Foundation of the plaintiff's claim is oral partition and easementary right....”

6. In the circumstances, as no perversity or error is committed by the learned Appellate Court or the learned trial Court, in allowing the application Exh.5 in favour of the plaintiff, I am not inclined to interfere with the impugned order. Accordingly, writ petition is dismissed.

[ANIL S. KILOR, J.]

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