



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5758 OF 2024

Latabai Jijabrao Patil

VERSUS

Machindra Asaram Patil And Others

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Mr. S. S. Gangakhedkar, Advocate for the Petitioner

Mr. B. R. Warma, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 16, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Petitioner in RCS No.66/2022 takes exception to order passed by learned Trial Court rejecting application Exh. 6 and confirmation thereof in Misc. Civil Appeal No. 21/2023.

3. The facts which led to the filing of this Petition can be narrated in brief as under:

About 20 persons from various agricultural properties situated at Palaskhede Sim, Tq. Parola, Dist. Jalgaon filed proceedings under Section 5 of the Mamlatdar's Courts Act (for short '**the Act**') against

Babaji Patil who is said to be owner and occupier of Gut No. 91/A/1 alleging that the pre-existing road has been obstructed by creating obstruction therein. It is claimed that except for this way, there is no other way for these persons to access their agricultural fields and hence, obstruction was sought to be removed. Undisputedly, Babaji Patil appeared in the said proceedings and contested application but he did not claim that he is not owner and occupier of Gut No. 91/A/1 and hence, not concerned with the said obstruction. Spot was inspected and panchnama was prepared. It was found that there was heap of stones which is not natural but was created in order to cause obstruction. On the basis of this, application was allowed and obstruction is directed to be removed. This order was challenged by Babaji Patil himself in RTS Revision No. 66/2021 before Sub-Divisional Officer, Erandol unsuccessfully. Thereafter, the execution of the said order is sought.

4. Petitioner Latabai claims herself to be the owner of Gut No. 99/A/2 and has objected to the said execution of the order and also filed RCS No. 66/2022.

It is contention of the Petitioner that she was not joined as party to the proceedings under the Act and the order passed by the Tehsildar is against principles of natural justice as she was not given an opportunity of hearing in the said suit. On these amongst other grounds, suit with Exh. 6 is filed for injunction against Respondents.

5. Respondents appeared in the said suit and filed written statement and counter claim. Similarly, injunction application came to be filed by the Defendants therein vide Exh. 6. Learned Trial Court rejected both applications. This order was not interfered with in MCA No. 21/2023. Hence, this Petition.

6. Learned Counsel for Petitioner has sought to argue that admittedly Latabai was not made party to the proceedings before Tehsildar and it was solely filed against Babaji Patil. It is contended that though order is passed in respect of removal of the obstructions in Gut No. 99/A/1, however, the same is sought to be executed against Petitioner in Gut No. 99/A/2. To

support his submissions, he placed reliance on the sale deeds which are executed by erstwhile owner Ravindra on the same day in favour of three persons, namely, Babaji, Dattatraya and Latabai. It is his submission that the land bearing gut no. 99/A/2 is towards eastern side abutting to which Gut No. 98 is situated. It is his submissions that in such circumstances no order ought to have been passed in the proceedings unless she was heard.

7. The impugned order of rejection of Exh. 6 is supported by Respondents. Admittedly, order is not challenged. It is submitted that since the obstruction was cleared, Respondent did not find it necessary to challenge the said order.

8. At interim stage, learned Trial Court has refused to grant injunction in favour of Petitioner/Plaintiff. This Court is required to consider the facts as they appear on the face of record. The order passed by Tehsildar under Section 5 of the Act indicates that there was specific allegation against Babaji that he has created obstruction in the

existing way which is to the corner of the east and southern side of the 99/A. At no point of time before Tehsildar as well as before S.D.O. Babaji has claimed that he is not in possession/occupation of the property wherein obstruction is seen. The order passed by the Tehsildar is not interfered with in Revision by S.D.O. As far as the contention of the Petitioner about she holding the land bearing Gut No. 99/A/2 is concerned, the said contention is based upon the sale deed executed by the erstwhile owner of the property. There is no dispute about the fact that no subdivision has taken place of said agricultural land and therefore, at least at this stage it cannot be said that as to who is holding which portion of the land. Suffice it to say that when there was no objection raised by Babaji with regard to possession of land, at this stage it would not be possible to discard the order passed by the Tehsildar.

9. Having regard to the aforestated facts, there is reason to believe that this could be a case of Petitioner claiming herself to be in possession of that portion of land in order to circumvent the order passed

by Tehsildar. Having regard to the fact that the agriculturist in number of lands situated at Palaskhede Sim were aggrieved by such obstruction, this Court does not find it appropriate to cause interference in the impugned order. As a result of this, Petition stands dismissed.

10. All above observations are restricted to the decision of this Petition and Trial Court not to get influenced by the same while deciding the suit.

(R. M. JOSHI, J.)

Malani