



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14888 OF 2023

Somnath s/o. Khandu Butte & Ors.

..

Petitioners

Versus

Bhimabai Nanasaheb Butte & Ors.

..

Respondents

Mr. Sk. Tarek Mobin H., Advocate for the petitioners.

Mr. M.P. Kale, Advocate for respondent Nos. 1 and 2.

Mrs. P.R. Bharaswadkar, AGP for the respondent/State.

CORAM : ARUN R. PEDNEKER, J.

DATED : 11.01.2024

PC :-

01. By present writ petition, the petitioner is challenging the order of refusal of injunction in Regular Civil Suit No.512 of 2022 passed by the Civil Judge, Senior Division, Vaijapur so also the order passed by the Adhoc District Judge, Vaijapur, Dist. Aurangabad in MCA No.11 of 2022 whereby the order passed by the Trial Court refusing injunction was maintained by the Appellate Court.

02. Briefly the facts can be stated as under :-

. Plaintiff No.1 is owner and possessor of agricultural land bearing Gat No.193 admeasuring 4 Hectare 18 R. Plaintiff Nos. 2 and 3 are owners and possessors of land admeasuring 65 Guntas situated at Veergaon, Tq. Vaijapur, Dist. Aurangabad. The defendants are owners and possessors of agricultural land Gat No.188. The plaintiffs and the defendants are related to one another. Defendant Nos.1 and 2 filed application before the Mamlatdar under section 5 of the Mamlatdar's Courts Act, seeking direction to remove obstruction from the pathway/*vahiwat* passing from the agricultural land of the petitioners to the agricultural land of the defendants/respondents. Said application was allowed by the Mamlatdar. After the application was allowed by the Mamlatdar, the petitioners/plaintiffs filed suit against the defendants claiming that there is no approach road going through land of the petitioners to the land of the respondents and further sought injunction and declaration that the order passed by the Mamlatdar is bad in law. In the said suit the plaintiffs/petitioners also filed application for interim relief.

03. The leaned Trial Court after considering the material on record rejected the application for interim relief. Thereafter, the plaintiffs/petitioners filed an appeal to the Adhoc District Judge, Vaijapur seeking injunction

against the defendants. It was also rejected by the Appellate Court. Challenging both these orders the present writ petition is filed.

04. It is submission of the petitioners/plaintiffs that the order passed by the Tahsildar is erroneous and that the inspection carried out by the Circle Inspector was a faulty one and no reliance could have been placed upon the inspection of the Circle Inspector and as such order passed by the Mamlatdar under the Mamlatdar's Courts Act allowing the application of the defendants is bad in law. It is also further case of the plaintiffs/petitioners that there is no road passing through the land of the plaintiffs to the land of the defendants.

05. The perusal of the orders indicates that the Courts below have relied upon panchanama by the Circle Inspector so also the photographs filed by the defendants on record showing that a sign board is installed on the approach road indicating that the road is only available for the use of Bhausaheb Khandu Pardeshi. Thus, the Court has held that there is a road in existence. It is the contention of the petitioners that the road is private road, only to be used by the Bhausaheb Khandu Pardeshi. The Court has also noted the fact that the plaintiffs and defendants are related to each other and their

ancestral properties are divided between them. The Court has also noted the fact that as alleged by the plaintiff that the road leads to the property of one Mr. Somnath Khandu Ghute is not established by any supporting evidence.

06. Further the Trial Court has noted that the petitioner has produced Google map to show that there is no road in existence and the petitioner submits that if the road is allowed, it will create a new road from the property of the plaintiff and the suit would be rendered infructuous. However, the Appellate Court has further noted two important facts in the matter. One, copy of the sketch prepared by the Circle Inspector on inspection and the photographs produced by the defendant that there is existence of the road. The photographs are not denied by the plaintiffs but their only contention is that it is available only for Bhausahab Khandu Pardeshi. Thus, existence of road is not seriously disputed. Prima facie it can be held that such road is in existence leading from the property of the plaintiffs to the defendants. Whether there is any easementary right of the defendant over the road would be decided at the time of final hearing and that no irreparable loss would be caused to the plaintiff if such road is allowed to be used by the defendants and that it can also be noted that the plaintiffs would be entitled to compensation

for wrongful use of the road as available under section 22 of the Mamlatdar's Courts Act.

07. Since both the Courts have concurrently accepted that prima facie there is a road in existence and that no irreparable loss would be caused to the plaintiff if the road is permitted to be used by the defendants; whereas if the road is obstructed irreparable loss would be caused to the defendants, I see no error in the order passed by Courts below.

08. In view of the same, the petition is dismissed. However, taking the totality of the facts and circumstances of the case, the Trial Court is directed to decide the suit as expeditiously as possible.

[ARUN R. PEDNEKER, J.]