
IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 442 OF 2020****ALONGWITH****CIVIL APPLICATION NO. 886 OF 2019****WITH****SECOND APPEAL NO. 441 OF 2020****ALONGWITH****CIVIL APPLICATION NO. 885 OF 2019**

Shri. Prakash Laxman Ghugare,
through Power of Attorney Holder
Khandappa Laxman Ghugre and Ors.

} ..Appellants
(Orig.Respondents)

V/S.

1.Vishwanath Kalappa Ghugare
2. Government of Maharashtra

} ..Respondents

Mr. Ojas Deolankar, for the Appellants.

Mrs. Geeta Mulekar, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 18 APRIL 2024.

P.C. :

1) The challenge in the Appeal is to the Decree dated 2 February 2019 passed by the Ad-hoc District Judge-3, Solapur in Regular Civil Appeal No. 172/2015. The first Appellate Court has

allowed both the Appeals and has set aside the Decrees passed by the Trial Court by which Regular Civil Suit No. 333/2008 and Regular Civil Suit No. 37/2010 were dismissed. The first Appellate Court has granted injunction in favour of Respondent-Plaintiff by restraining Appellant/Defendant No.2 from causing any obstruction or interference in respect of Plaintiff's possession in land bearing Gat No.3 on the basis of Orders passed by the Tehsildar and Additional Collector in Rasta Case.

2) Defendant No.2 purchased land bearing Gat No.2/2 and filed application under Section 5 of the Mamlatdar Court's Act, 1906 (**the Act**) for removal of obstruction in respect of the alleged approach road to his land passing through Plaintiff's land bearing Gat No.3. The Tehsildar conducted site inspection and prepared panchanama, based on which Tehsildar proceeded to pass Order under Section 5(2) of the Act directing removal of obstruction from cart road in Plaintiff's land bearing Gat No.3 for accessing the land of Defendant No.2 bearing Gat No.2/2. By Order dated 23 December 2009, Tehsildar's order came to be upheld by the Additional Collector in Revision filed under provisions of Order 23(2) the Act.

3) Plaintiff thereafter filed Regular Civil Suit No.333/2008 seeking injunction against Defendant No.2 from interfering in

possession of his land. During pendency of Regular Civil Suit No.333/2008, Plaintiff also filed Regular Civil Suit No.37/2010 seeking a declaration that the order passed by the Tehsildar on 30 May 2008, as well as order passed by the Revisional Authority on 23 December 2009, are void. In that suit as well, Plaintiff sought injunction against Defendant No.2 from interfering in respect of possession of land bearing Gat No.3 on the basis of Order passed by the Tehsildar and Additional Collector.

4) The Trial Court proceeded to dismiss both the suits by common Decree dated 28 July 2015. The first Appellate Court has reversed the decision of the Trial Court by its decree dated 2 February 2019 and has granted injunction in favour of Plaintiff by restraining Defendant No.2 from causing obstruction or interference in Plaintiff's possession over land bearing Gat No.3 on the basis of order passed by the Tehsildar and Additional Collector.

5) I have heard Mr. Deolankar, the learned counsel appearing for the Appellant and Mrs. Mulekar, the learned counsel appearing for the Respondent/Original Plaintiff.

6) Perusal of the findings recorded by the first Appellate Court would indicate that it has gone through the panchanama, as well as the

order passed by the Tehsildar in Rasta Case and has arrived at the conclusion that the panchanama was silent about the existence of cart road in Plaintiff's land bearing Gat No.3. I have also gone through the panchanama prepared by the Tehsildar during the course of his site visit on 15 February 2008. The panchanama does not reflect existence of any road passing through Plaintiff's land. The panchanama vaguely records that there was some open space at the southern portion, where some obstruction was created by putting stones and thorns by Plaintiff. On the basis of the panchanama dated 15 February 2008, Tehsildar proceeded to pass Order in favour of Defendant No.2 on 30 May 2008 for removal of said obstruction. Perusal of the order passed by the Tehsildar of 30 May 2008 would again indicate that no specific finding is recorded that existence of cart road was noticed in any portion of the Plaintiff's property bearing Gat No.3. Mere noticing of obstruction was not sufficient and it was necessary for the Tehsildar to observe existence of cart road during the course of his site inspection. Neither the spot panchanama nor order of the Tehsildar indicates existence of any cart road on which obstruction was allegedly created by the Plaintiff. Existence of road is a jurisdictional fact, in absence of which, the Tehsildar cannot exercise jurisdiction under Section 5(2) of the Act. In my view, therefore in absence of recording any finding about existence of the road, the Tehsildar could not have directed removal of obstruction.

7) Therefore, no serious error can be traced in the view taken by the first Appellate Court about errors committed by the Tehsildar in allowing the application filed by Defendant No.2.

8) Mr. Deolankar, would seek to contend that the first Appellate Court has not set aside the orders passed by the Tehsildar and Additional Collector and therefore an incongruous situation is created where the orders passed by the Tehsildar and Additional Collector continue to operate and at the same time, there is injunction granted in favour of Plaintiff contrary to the orders of the Tehsildar and Additional Collector. I am unable to agree. What is done by the first Appellate Court is that an injunction is granted in Plaintiff's favour by restraining Defendant No.2 from causing obstruction to Plaintiff's possession over the land bearing Gat No.3 on the basis of orders passed by the Tehsildar & Additional Collector. The effect of the order passed by the first Appellate Court is such that the orders passed by the Tehsildar and Additional Collector cannot be used for the purpose of claiming any rights in respect of the Plaintiff's land bearing Gat No.3. This has effectively rendered the orders passed by the Tehsildar and Additional Collector nugatory.

9) Mr. Deolankar, would further submit that the land of Defendant No.2/Appellant is land locked and that there is no other

access road for the same. Mrs. Mulekar is quick enough to invite my attention to the evidence of one of the witnesses before the Trial Court in which he has deposed that there is approach road from northern side for the land of Defendant No.2. She would submit that the said evidence has remained uncontroverted. Mr. Deolankar would submit that on the northern side of land of Defendant No.2, there is a stream and that there is no question of existence of any approach road from that side. If Defendant No.2 believes that there is no other access road to his land or that his land is landlocked, he can always file proceedings under Section 143 of the Maharashtra Land Revenue Code, 1966 (**Code**) seeking creation of road on the boundary. The jurisdictions under Section 5 of the Act for removal of obstruction and under Section 143 of the Code for creation of new road are entirely different. In the light of absence of any finding in the panchanama or in the order of the Tehsildar about existence of cart road, jurisdiction under Section 5(2) could not have been exercised. Therefore, it would be open for Defendant No.2/Appellant to file proceedings under Section 143 of the Code for seeking a right of way from Plaintiff's land. Nothing observed by the Trial Court, First Appellate Court, as well this Court would come in the way of Defendant No.2 exercising his remedy under Section 143 of the Code.

10) I am therefore of the view that no substantial question of law is involved in the Appeal. The Second Appeals are accordingly **rejected** with liberty to the Appellants to initiate proceedings under Section 143 of the Code.

11) With rejection of the Appeals, Civil Applications No.885/2019 and 886/2019 do not survive. The same also stand disposed of.

[SANDEEP V. MARNE, J.]