



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

23 WRIT PETITION NO. 447 OF 2023

Ravinddra s/o Dattatraya Kunjar
VERSUS
Yashodabai w/o Raibhan Navpute and others.

...
Advocate for Petitioner : Mrs. J T Ghorpade-Nawale
AGP for Respondents: Mr. K.S. Patil
Advocate for Respondents 1,2 & 4 : Mr. R.V. Gore
...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 04, 2025

FINAL ORDER :-

1. Heard learned advocates appearing for the respective parties.

2. Petitioner is original plaintiff in Regular Civil Suit No.378 of 2022. The suit is instituted seeking declaration that order dated 8.3.2022 passed by Respondents/Authorities granting way in favour of respondent nos. 1 to 4 is illegal and consequentially seeking the relief of perpetual injunction.

3. In nutshell, it is contention of petitioner that petitioner is owner of land in gat no.66 to the extent of 19 Acres 06 Gunthas. Respondent nos.1 to 4 are having lands in gat no.61, 62 and 63 on eastern side of the land of petitioner.

Respondent nos.1 to 4 are using the way from land gat nos.60, 61, 62 and 63, which passes from eastern side in south-north direction. Respondent nos.1 to 4 by joining hands with respondent nos.5 to 7 are trying to create new cart way from the land of petitioner. Accordingly, respondent nos.1 to 4 approached respondent no.7 under the provisions of Mamlatdar Courts Act. Respondent no.7 passed an order dated 8.3.2022, thereby granting way in favour of respondent nos.1 to 4 from the land of petitioner. According to plaintiff, the order passed by respondent no.7 is illegal, and therefore, needs to be declared as invalid and injunction needs to be granted against respondents from creating any way from the land of petitioner.

4. Petitioner filed an application below Exhibit-5 seeking temporary injunction against defendants. Learned Trial Court, after considering rival submissions, observed that respondent no.7 had exercised his powers under the provisions of Mamlatdar Courts Act. In course of such exercise, spot panchnama is carried out on 2.3.2021, which depicts that respondent nos.1 to 4 have no alternate access way, whereas way passing from the field of petitioner has been destroyed

and, therefore, directions are given by the Tahsildar to make a way in favour of respondent nos.1 to 4. The Trial Court observed that plaintiff could not make out prima facie case and balance of convenience would lie in favour of the defendants. As such, refused to entertain the application below Exhibit-5. Petitioner, then, approached the learned District Judge, Vaijapur, by filing Misc. Civil Appeal No.29 of 2022, which came to be dismissed vide order dated 9.12.2022. Hence, this writ petition.

5. Learned counsel appearing for petitioner invites attention of this Court to 7/12 extract regarding survey no.38 presently gat no.63. She also invites attention of this Court to the village map and submits that respondent nos.1 to 4 have alternate way to approach their field in gat nos.61, 62 and 63. She would therefore urge that application below Exhibit-5 ought to have been allowed and the respondents ought to have been enjoined from disturbing possession or enjoyment of plaintiff over the suit land.

6. Per contra, Mr. Gore, learned advocate appearing for respondents submits that petitioner is relying upon the village map and 7/12 extract, which are not part of the record

of Trial Court or Appellate Court. He would submit that petitioner has filed Revision Application No.29 of 2022 challenging the order dated 8.3.2022 passed by learned Tahsildar before the Sub-Divisional Officer, Vaijapur under section 23 (2) of the Mamlatdars' Court Act. He would therefore urge that suit itself cannot be entertained.

7. Having considered the submissions advanced, it can be observed that petitioner owns land in gat no.66, whereas respondent nos.1 to 4 are owners from land gat nos. 61, 62, and 63. According to respondents, they have no alternate access way to approach the land as petitioner has blocked the existing way passing from their land. On the other hand, contention of petitioner is that, alternate way can be seen from the old revenue record as well as village map.

8. On considering rival contentions, it can be observed that, revenue documents relied by petitioner were not placed before the Trial Court or Appellate Court. Both the Courts while considering prima facie case observed that defendants have no alternate way to access their land.

9. However, on the basis of revenue record and village map, petitioner is making endeavour to demonstrate existence of such road. Further, respondents have brought on record the fact that petitioner has already availed remedy of revision against Mamlatdar's order dated 8.3.2022. The revision is pending before Sub-Divisional Officer. Apparently, all these facts were not before the Trial Court when impugned order is passed or before learned District Judge, when the impugned appellate order is passed.

10. In this background, this Court deems it proper that the matter needs to be relegated back to Trial Court for re-consideration on the basis of revenue documents, which are filed before this Court. The plaintiff would be at liberty to file the documents, which are placed in this petition from page nos.79 to 83 i.e. 7/12 extract of survey no.38, relevant map and Khasara Pahani Patrak. Upon considering the aforesaid documents, Trial Court to pass fresh order on application below Exhibit-5. The Trial Court shall also consider effect of revision application filed by petitioner against the order of Tahsildar.

11. In result, Writ petition is **partly allowed** and disposed off in aforesaid terms. The learned Trial Court shall pass fresh order on application below Exhibit-5 within a period of Three (3) months from today after considering additional material and rival submissions. All contentions kept open.

(S. G. CHAPALGAONKAR)
Judge

...

aaa-