



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 229 OF 2014

Narendrasingh Pralhad Girase
Age: 30 Years, Occu.Agriculture,
R/o,Osarli,Tal:Dist: Nandurbar

APPELLANT
(Original Defendant)

VERSUS

1. Dr. Sanjay S/o Ganapati Birla
Age:55 Years, Occu.Doctor & Agriculture,
2. Sau. Vidya W/o Sanjay Birla
Age: 47 Years, Occu:Doctor& Agri

Both R/o Main Road, Shahada,
Tal:Shahada, Dist: Nandurbar.

RESPONDENTS
(Original Plaintiffs)

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- *Mr. A. P. Bhandari h/f. Mr. R. R. Sancheti, Advocate for Appellant*
 - *Mr. H. V. Tungar, Advocate for Respondent Nos.1 and 2*
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CORAM

: SHAILESH P. BRAHME, J.

DATE

: 18.11.2025

ORDER :-

1. Heard both sides.
2. Appellant/defendant is aggrieved by concurrent findings of facts recorded by Courts below in granting relief of perpetual

injunction against him. Parties are referred by their original status in the Trial Court.

3. The controversy pertains to easement of access to land Gat No.111 belonging to the defendant. He claims an access from the common boundary of Gat No.104 and 103 having width of 7 ft. Plaintiffs assert that there is no such access and alternate way is available. The defendant is causing obstruction to their Gat No.104 under the garb of access.

4. In the Trial Court, recourse was taken to the appointment of Court Commissioner. He had submitted report. Parties adduced oral evidence. The title of the relevant agricultural lands is not disputed. It is recorded that an embankment exists between Gat No.103 and 104 having width of 2 to 3 ft. It is further recorded that defendant failed to prove any right of way and the alternate way available to the defendant has been proved.

5. Learned counsel Mr. A. P. Bhandari for the appellant submits that present suit is not maintainable and it is filed with oblique motive. The plaintiffs should have approached before the competent authority for the adjudication of boundary and right of way.

It is submitted that decree of injunction restraining the defendant from approaching competent statutory forum is against the provisions of Sec. 41(a) and (h) of the Specific Relief Act (for the sake of brevity and convenience hereinafter referred as to the “Act”). It is further submitted that there was no cause of action and the claim is misconceived.

6. Per contra, learned counsel Mr. H. V. Tungar for the respondents supports concurrent findings of facts. He has tendered on record the paper book to point out relevant part of the depositions of the witnesses to show that there never existed right to way as claimed by the defendant. It is submitted that defendant should have filed counter claim or independent suit asserting his right of way.

7. I have considered rival submissions of the parties. I have also gone through the map produced on record. The defendant had approached Mamlatdar U/Sec. 5 of the Mamlatdar’s Courts Act on 28.12.2005. Present suit was filed on 17.01.2006. Plaintiffs are not precluded from filing suit U/Sec. 9 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C.P.C.”). On the contrary Civil Court is empowered to decide rights and liability of the parties in a substantive proceedings. It cannot be

countenanced that the proceedings under the Mamlatdar's Courts Act or under the provisions of the Maharashtra Land Revenue Code are the only remedies available to the parties. Those remedies are summary in nature.

8. The proceedings U/Sec. 5 of the Mamlatdar's Courts Act are summary in nature and that it is restricted jurisdiction. What is prohibited U/Sec. 26 of the Act is filing of any suit under that Act. It does not bar remedy of civil suit. Mamlatdar is empowered to refuse to exercise the jurisdiction U/Sec. 5 of the Mamlatdar's Courts Act, if it is felt that the case can be more suitably dealt by a Civil Court. Mamlatdar is empowered to return the plaint for filing it before the Court U/Sec. 13 of the Mamlatdar's Courts Act. I find no substance in the submissions of the appellant that suit is not tenable.

9. Perusal of plaint shows that the defendant was obstructing peaceful possession of the plaintiffs over land gut No. 104. The right of way claimed by the defendant is denied in the plaint. The cause of action is the damage caused to the crops of the plaintiffs. For the cause of action remedy U/Sec. 143, 144 and 149 of the Maharashtra Land Revenue Code (for the sake of brevity and convenience hereinafter referred as to the "M. L. R. Code.") is not available. The suit cannot be

said to be barred by implication of Sec. 41(h) of the Act. Neither Sec. 41(a) or (b) of the Act prohibits remedy of injunction. I find no merit in the submissions of the learned counsel for the appellant.

10. Learned counsel for the respondent adverted my attention to the admissions brought on record. The admission of the defendant shows that the plea taken in the written statement is deviated. It was pleaded that right to way exists on common bandh of land gut Nos. 103 and 104. The admission shows that it was not on common bandh, but in between land gut Nos. 103 and 104 a road having seven feet width existed. The Commissioner report as well as the oral evidence do not support plea of the defendant. It has come on record that no such road existed.

11. The admissions of the defendant's witnesses Gokul and Mansing show that no road having width of seven feet existed in between gut Nos. 103 and 104 and the people in the vicinity used alternate way. The cross examination of the Court Commissioner does not support the defendant. Both the Courts below have rightly recorded that defendant was unable to prove existence of road from common bandh of gut Nos. 103 and 104.

12. It is tried to be canvassed by the appellant that under Rule 4 of the Maharashtra Land Revenue (Boundary and Boundary Mark) Rules, 1969, it is incumbent to provide access with a particular width, free from trees and the crops. There was no specific plea in the written statement and no issue was framed in the Trial Court. It is not permissible to entertain the submission for the first time in the High Court and that cannot be the substantial questions of law.

13. Concurrent findings of facts are reasonable and plausible. No substantial questions of law is found in appeal.

14. Second appeal is dismissed.

(SHAILESH P. BRAHME, J.)

PRW

1. After pronouncement of the judgment, learned counsel for the appellant requests for continuation of interim relief, which is in operation up to this date.

2. The request is objected by the learned counsel for the respondents.

3. This court had granted interim relief vide order dated 10.04.2014 which is in operation till today. The same shall be continued for a period of six (6) weeks. After the expiry of the period, interim relief shall stand vacated without further reference to the Court.

(SHAILESH P. BRAHME, J.)

PRW