

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.349 OF 2025
WITH
INTERIM APPLICATION NO.8510 OF 2025

Baburao Mahadeo Mali & Ors. ...Appellants
Versus
Ramchandra Krushna Mali & Ors. ...Respondents

Mr. Abhishek T. Ingale i/b. Ms. Rati Sinhasane, for the Appellants.

CORAM: MADHAV J. JAMDAR, J.
DATED : 8th JULY 2025

JUDGMENT:-

1. Heard Mr. Ingale, learned Counsel appearing for the Appellants.

2. The challenge in this Second Appeal is to the Judgment and Decree dated 9th April 2025 passed by the learned District Judge-5, Sangli at Sangli in Regular Civil Appeal No.279 of 2017. By the impugned Judgment and Decree, the said Regular Civil Appeal has been allowed by setting aside the Judgment and Decree dated 27th September 2017 passed by the learned Civil Judge, Junior

Division, Tasgaon in Regular Civil Suit No.68 of 2009. Resultantly the said suit is dismissed.

3. The said Regular Civil Suit No.68 of 2009 has been filed by the present Plaintiffs seeking relief of perpetual injunction restraining the Respondents/Defendants from obstructing Plaintiff's exclusive possession and use as their private road. The learned Trial Court has granted perpetual injunction, whereas learned Appellate Court has allowed the Appeal and dismissed the suit.

4. Mr. Abhishek Ingale, learned Counsel, submitted that the following substantial questions of law arise in this Second Appeal:

- (a) Whether the Ld. Appellate Court was justified in not considering the fact that, in the teeth of the order of authorities under the Mamlatdar's Courts Act, 1906, the remedy of Respondents was to file a suit for declaration claiming either a right of easement and/or right of necessity and in the absence of the same in

Plaintiffs' suit no reliefs can be granted to the Defendants?

- (b) Whether the Ld. Appellate Court failed to consider that the Defendants cannot raise a defense as to easementary right without there being any pleading in a suit for perpetual injunction based on title and possession?

5. Before considering the substantial questions of law raised by Mr. Ingale, learned Counsel, it is necessary to set out certain factual aspects:

- i. The Respondents i.e. Defendants filed an application before Tahsildar, Tasgaon under Section 5(2) of the Mamlatdar's Courts Act on 18th July 2009. The said application was filed for removal of obstruction created by the Plaintiffs over the road passing through Gut Nos.531, 532, 533, 516, 513, 514, 517, 518, 519 and 521.
- ii. The Tahsildar, Tasgaon by order dated 24th August 2009, allowed the said suit / application filed under Section 5(2) of the

Mamlatdar's Courts Act and directed removal of obstruction by the Plaintiffs.

iii. The said order passed by the Tahsildar dated 24th August 2009 is challenged by the present Appellants by filing appeal before the Sub-Divisional Officer, Miraj and the said Appeal has been dismissed.

iv. Thereafter, the Plaintiffs filed Revision before the Deputy Collector and Assistant Collector, Miraj and the said Revision was also dismissed by the order dated 10th February 2017.

v. In the meanwhile, on 10th August 2009 the Appellants i.e. Plaintiffs filed present suit seeking perpetual injunction against the Defendants restraining them from obstructing Plaintiff's exclusive use and possession of private road passing through the suit land. The relief which is sought by the Plaintiffs is regarding the road which is also the subject matter of proceedings filed under the Mamlatdar's Courts Act.

vi. The learned Trial Court by the Judgment and Decree dated 27th September 2017 decreed the suit and restrained the

Defendants by an order of perpetual injunction from causing obstruction and interfering with the Plaintiffs' possession over the suit premises.

vii. The Defendants challenged the Judgment and Decree of the learned Appellate Court and the learned Appellate Court by the impugned Judgment and Decree set aside the order passed by the learned Trial Court and resultantly the suit has been dismissed.

6. In view of the above factual aspects, it is necessary to consider the substantial questions of law raised by Mr. Ingale, learned Counsel.

7. The first substantial question of law is concerning whether the learned Appellate Court was justified in not considering the fact that, in the teeth of the order of authorities under the Mamlatdar's Courts Act, 1906, the remedy of Respondents was to file a suit for declaration claiming either a right of easement and/or right of necessity and in the absence of the same in Plaintiffs' suit no relief can be granted. The second substantial question of law raised by the learned Counsel appearing for the

Appellants is whether the learned Appellate Court was justified in not considering that Defendants can raise a defense as to easementary right without there being any pleading in a suit for perpetual injunction based on title and possession.

8. Perusal of paragraph No.9 of the Appellate Court order shows that road which is passing through Gut Nos.531, 532, 533, 516, 513, 514, 517, 518, 519 and 521, was subject matter in the proceedings under the Mamlatdar's Courts Act and also the same is the subject matter of the suit.

9. It is required to be noted that the proceedings before the authority under Mamlatdar's Courts Act have been filed by the Defendants i.e. Respondents on 18th July 2009 and the present suit has been filed by the Plaintiffs on 10th August 2009 i.e. after the filing of proceedings under the Mamlatdar's Courts Act.

10. In the suit, relief which has been sought by the Plaintiffs is of perpetual injunction and that the Defendants should not make any demand of road. The relief sought is to be understood in the facts and circumstances as the suit has been filed on 10th August 2009

after the filing of the proceedings by the Defendants before the authority under the Mamlatdar's Courts Act on 18th July 2009. It is required to be noted that the learned Trial Court on the basis of the pleadings has framed the issue whether Plaintiffs prove that the suit properties are in their exclusive possession and use, whether the Plaintiffs prove that alternate road as pleaded in plaint is available to the Defendants and whether the Defendants prove that they have right to use the road as claimed in paragraph No. 10 of the written statement. Therefore, the issues are framed as per the pleadings and the learned First Appellate Court also framed the points accordingly.

11. Perusal of the record shows that the authorities under the Mamlatdar's Courts Act has throughout held in favour of the Respondents. The only contention raised by Mr. Ingale, learned Counsel is that the learned Appellate Court has heavily relied on the findings recorded in the proceedings before the Mamlatdar's Courts Act and therefore, the said substantial questions of law are raised. However, perusal of the order of the learned Appellate Court shows that the orders passed by the authorities under the Mamlatdar's Courts Act have been quoted, as the same is factual

position. However, learned Appellate Court after analyzing the evidence of the witnesses including PW.4-the Court Commissioner has held that there is a road in existence at Gat Nos.531, 532 and 533 and finding is recorded that the said evidence of the P.W. 4-the Court Commissioner supports the observations made in the order of the Deputy Collector and Assistant Collector dated 10th February 2017. The learned First Appellate Court after analysing the evidence on record has held that the Plaintiffs have failed to prove of having independent vehicle road mentioned in the hand-sketch as “A-B” filed alongwith the plaint exclusively for use of Plaintiff’s family and hence are not entitled to seek permanent injunction. The findings recorded by the learned Appellate Court shows that the Defendants were using the said road for many years. Learned Appellate Court has taken into consideration the evidence on record including the evidence of DW 3 and DW 5. Therefore, there is no substance in the contention of Mr. Ingale, learned Counsel that the learned Appellate Court in effect has held that the suit is not maintainable and heavily relied on the finding recorded in the proceedings filed under the Mamlatdar’s Courts Act.

12. Mr. Ingale, learned Counsel has relied on the decision of the High Court of Karnataka at Bangalore in the case of *B. Bommegowda & Anr. vs. K. H. Ramalingegowda & Anr.*¹ In that case, the following substantial questions of law are framed:

- i. Whether the Courts below can grant relief to the defendants where there is no prayer for easement of necessity in the absence of sufficient Court fee being paid?
- ii. Whether the defendants can be given the status of a claimant for declaration in a bare injunction suit filed by the plaintiffs?
- iii. Whether the Courts below can accept the Commissioner's report only on account of Tahsildar's Mahazar, ignoring Government records?

13. Thus, the substantial question of law framed by the learned High Court of Karnataka at Bangalore is whether relief can be granted to the Defendants where there is no prayer for easement

1 (2010) SCC OnLine Kar 360

of necessity in the absence of sufficient Court fee being paid. In fact, in this case no relief is granted in favour of the Defendants. The suit of the Plaintiffs was decreed by the learned Trial Court and by allowing the Appeal and by setting aside the decree passed by the learned Trial Court the suit was dismissed by the learned Appellate Court. It is the contention of the Plaintiffs in the plaint that the Plaintiffs are in exclusive possession of the said road and therefore, issue has been framed by the learned Trial Court concerning right of use of Defendants and the said point is also considered by the learned Appellate Court. Therefore, there is no substance in the contention raised by Mr. Ingale, learned Counsel appearing for the Appellants that the relief is granted in favour of the Defendant without any prayer or counter-claim. In fact, the order in effect passed is the dismissal of the suit and therefore no positive relief is granted in favour of the Defendants.

14. Accordingly, there is no substance in any of the substantial questions of law raised by Mr. Ingale, learned Counsel appearing for the Appellants. The Second Appeal is dismissed, however, with no order as to costs.

15. In view of the dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]