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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9635 OF 2017

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Tukaram Kashinath Sargar

... Petitioner

V/s.

Digambar Pandurang Sargar & Ors.

... Respondents

Mr. Ajay A. Joshi for the petitioner.

Mr. Priyal G. Sarda for respondent Nos.1 and 2.

Mr. S.D. Rayrikar, AGP for respondent Nos.3 and 4-
State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 4, 2025

P.C.:

1. The challenge in this writ petition is to an order passed by the Revisional Authority under Section 23 of the Mamlatdar's Courts Act, 1906 thereby allowing revision filed by respondent Nos.1 and 2.

2. The petitioner/original applicant filed an application under Section 5 of the Mamlatdar's Courts Act, 1906. Based on the panchanama indicating existence of road, the Tehsildar by order dated 12th May 2016 restrained opponent from causing impediment in the road which is in existence and restrained respondent Nos.1 and 2 from causing impediment in the existing road. However, the Revisional Authority allowed the revision filed by respondent Nos.1 and 2 recording a finding that the

panchanama drawn by the Tehsildar is vague. The Revisional Authority recorded a finding that the details of existence of road are not mentioned in the panchanama. Hence, the Revisional Authority set aside the order passed by the Tehsildar.

3. On perusal of the panchanama and other material on record, in my opinion, the same indicates existence of road. It also indicates existence of impediment caused by respondent Nos.1 and 2. Therefore, the Tehsildar had rightly restrained respondent Nos.1 and 2 from causing impediment in the existing road.

4. The Revisional Authority in its limited jurisdiction could not have interfered with the well reasoned order passed by the Tehsildar relying on the panchanama which indicate existence of road. Therefore, in my opinion, the impugned order cannot be sustained.

5. Rule is made absolute in terms of prayer clause (a). No costs.

6. At this stage, learned Advocate for respondent Nos.1 and 2 submitted that for last seven years no injunction was granted against opponent No.2. However, the Tehsildar based on the material on record recorded a finding that the road is in existence and opponent Nos.1 and 2 restrained applicant from using the road. In such a case, remedy of opponents is to establish their right by instituting civil suit.

(AMIT BORKAR, J.)