

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15939 OF 2024

Vilas Gopal Jadhav and ors. ...Petitioners

Versus

Smt. Sunanda Raghunath Pawar and ors. ...Respondents

Mr. S. C. Wakankar, a/w Aishwarya Bapat, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 15th JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the petitioner.
2. The petitioners assail the legality, propriety and correctness of the judgment and order dated 13th March, 2024 in Misc. Civil Appeal No.17 of 2023 passed by the learned District Judge, Khed, whereby the appeal preferred by the petitioners – original plaintiffs against an order dated 11th August, 2023 seeking interim mandatory injunction against respondent No.1 – original defendant No.4 came to be dismissed.
3. The petitioners instituted Regular Civil Suit No.1 of 2021 seeking a declaration that the plaintiffs are the owners of the suit property described in paragraphs 1A and 1B and a

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mandatory injunction qua defendant No.4 to remove, dismantle and demolish the illegal construction of the laterite stones wall on the way *inter alia* described in paragraph 1C of the plaint. In the said suit, the petitioners preferred an application for temporary injunction. The said application (Exhibit-5) came to be rejected by the trial court. An appeal preferred there against is subjudised before the District Court at Khed.

4. The plaintiffs allege that during the pendency of the proceedings the defendant illegally blocked the entire access road of 7 ft. and left a small pathway to approach the suit property 1B. The plaintiffs filed application (Exhibit-43) seeking an interim mandatory injunction against respondent No.1 – defendant No.4 to remove, dismantle and demolish the said illegal construction of the laterite stones wall over the said way and restore the subject way to its original status.

5. The learned Civil Judge was persuaded to reject the application holding *inter alia* that the petitioner failed to establish that the subject way is a public road. That it had a width of 10 ft. and it was a motorable road and the petitioners were using the subject way since more than 30 to 40 years.

6. Being aggrieved, the petitioners carried the matter in appeal. By the impugned order, the learned District Judge, Khed, declined to interfere with the order passed by the trial court observing, *inter alia*, that the plaintiff failed to *prima facie* show the existence of the subject way, the balance of convenience lay in favour of respondent No.1 and the latter would suffer irreparable loss, if interim mandatory injunction was granted, at that stage.

7. Mr. Wakankar, the learned Counsel for the petitioners, endeavoured to urge that the trial court as well as the District Court did not properly appreciate the case of the plaintiff. The Courts were swayed by the fact that the application preferred by the plaintiffs under Mamlatdars' Courts Act for removal of obstruction was rejected, without correctly examining the import of the spot inspection report alongwith the map prepared in the said proceeding. The existence of the subject way is hardly contestable. Thus, the petitioner could not have been denied the relief.

8. First and foremost, the fact that the trial court and the District Court have recorded concurrent *prima facie* findings that the plaintiff failed to demonstrate existence of the subject way and the use of the same for 30 to 40 years by the

plaintiffs, deserves due weight. If these *prima facie* findings are based on material, then this Court would not be justified in interfering with the discretionary orders passed by the Courts, in exercise of supervisory jurisdiction. It is trite, the mere fact that a different view is possible on the same material is not a justifiable ground to interfere with a discretionary order unless the order is such that it can be termed to be perverse or the view taken by the Court is so unreasonable that it could not have at all been taken.

9. Second, it is imperative to note, the petitioners are seeking mandatory injunction at an interim stage. Undoubtedly, the Court is not precluded from passing of a mandatory order at an interim stage. However, in such a case, the plaintiff has to make out a very strong *prima facie* case. It has to be of a higher standard than a *prima facie* case which is required for in the matter of a prohibitory injunction.

10. On the aforesaid touchstone, reverting to the facts of the case, the trial court as well as District Court, on the basis of the material on record, have recorded findings that, first, the existence of the subject way with the dimensions as claimed by the plaintiffs has not been *prima facie* shown,

second, the plaintiffs failed to show that they were using the subject way since 30 to 40 years. The rejection of earlier application for temporary injunction and the rejection of application under Section 5 of the Mamlatdars' Courts Act were arrayed against the petitioners, and, in my view, justifiably. Such being the nature of the case of the plaintiffs, it cannot be said that the plaintiffs succeeded in making out a very strong *prima facie* case to grant mandatory injunction at an interim stage. Thus, no fault can be found with the impugned order.

11. Petition, thus, stands dismissed.

[N. J. JAMADAR, J.]