

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2418 OF 2025
WITH
WRIT PETITION NO.3105 OF 2025

VISHAL
SUBHASH
PAREKAR

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Vishnu Mahadu Deore and Another ...Petitioners
vs.

Dada Punja Gangurde and Another ...Respondents

Mr. Rameshwar Gite a/w. Mr. Hiten Raut and Mr. Sushant Tare, for
the Petitioners.

Mr. G.R. Agrawal a/w. Ms. Naina Boraste, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 12, 2025

P.C:

1. Heard Mr. Gite, the learned counsel for the petitioners, and
Mr. Agrawal, the learned counsel for the respondents.

2. The respondents are the plaintiffs in RCS No. 57 of 2023. The
said suit was instituted against the petitioners/ defendants for a
declaration that there is a way, running East- West, on the northern
boundary of Gat No. 177 and the plaintiffs had been using the said
way (the suit way) to approach their agricultural land bearing Gat
Nos. 176, since time immemorial without any interruption, and for
the consequential relief to restrain the defendants from causing
obstruction to the plaintiff's access to their agricultural land by the
suit way, and damage to the suit way.

3. In the said suit, the plaintiffs filed an application for temporary injunction (Exh.5).

4. The defendant No. 1 Vishnu Deore also instituted a suit being RCS No. 163 of 2023 against the plaintiffs in the first suit and sought injunctive reliefs against the plaintiffs in respect of the suit way asserting that the plaintiffs were falsely portraying that there existed a road through the land of defendant No. 1.

5. The defendant No. 1 had also filed an application for temporary injunction.

6. By an order dated 12th September, 2023, the learned Civil Judge, Yeola was persuaded to allow the application preferred by the plaintiffs and restrain the petitioners /defendants from causing obstruction to use the suit way till the final disposal of the suit. Conversely, the application preferred by the petitioners, in RCS No. 163 of 2023, came to be rejected.

7. Aggrieved, the petitioners preferred appeals before the District Court. By the impugned judgment and order, the learned District Judge found no ground to interfere with the orders passed by the trial Court and the appeals came to be dismissed.

8. Being further aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

9. Mr. Gite, the learned counsel for the petitioners would submit

that the Courts below have completely mis-appreciated the case set up by the parties. In fact, the plaintiffs had filed an application under section 5 of the Mamlatdar's Courts Act, 1906 (Act, 1906) and upon report of spot inspection having been submitted therein, withdrew the said proceeding. Thereafter, the plaintiffs instituted RCS No.57 of 2023.

10. Taking the Court through the map of the spot inspection conducted by the Tahsildar, Yeola in the proceedings under the Act, 1906, Mr. Gite strenuously submitted that the existence of an alternate road running through Gat No. 145 was clearly shown in the said map. Instead of taking into account the said fact, the trial Court as well as the learned District Judge have given undue weight to the fact that in the said map a way was shown on the northern side of Gat No. 177, which was categorically disputed. An endorsement to that effect was made by the Tahsildar in the said spot inspection report itself. Mr. Gite further submitted that the plaintiffs had categorically claimed that they have instituted the suit in assertion of their right to use the suit way as an easement by prescription and easement of necessity. None of the said easementary rights had any application to the facts of the case, urged Mr. Gite.

11. Mr. Gite placed reliance on a judgment of this Court, in the

case of **Pundalik Narayan Pednekar vs. Augusto Fernandes**¹ wherein it was enunciated that it was incumbent upon the plaintiffs to show the time from which the user commenced.

12. I have carefully perused the material on record. The Courts below have proceeded on the premise that there were three documents which referred to the existence of the suit way. First, the suit way was shown in the old village map. Second, the Executive Engineer, Division I, Yeola has submitted a report to the effect that initially Yeola-Bharam road passed abutting the land bearing Gat Nos. 177 and 176 and, subsequently, the alignment of the said road changed and it now passes through Gat No. 145 dividing it into two parts. However, the rough road on the northern side of Gat Nos. 177 and 176 still exists. Third, in the spot inspection report, the Tahsildar had shown the suit way. Undoubtedly, there is an endorsement that the suit way is disputed. Nonetheless, the factum of existence of way can be said to be prima facie made out.

13. In the face of the aforesaid documents, the trial Court as well as the learned District Judge can be said to have based their findings on objective material. These prima facie finding of facts are not open for interference in exercise of limited supervisory jurisdiction. Since the existence of the suit way is prima facie established, the Courts below were justified in granting temporary

¹ 2012 AIR (Bom.) 182.

injunction against the defendants/petitioners. The said discretionary order can not be interfered with in exercise of writ jurisdiction. The petition, therefore, deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The petition stands dismissed.
- 2] All questions are however kept open for consideration at the trial.
- 3] The trial Court shall not be influenced by any of the observations made hereinabove which are confined to test the legality, propriety and correctness of the impugned order.

(N. J. JAMADAR, J.)