

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2544 OF 2025

Abhijit Annasaheb Pawar and anr. ...Petitioners

Versus

Jaysingrao Shivajirao Patil and ors. ...Respondents

Mr. P. D. Dalvi, for the Petitioners.

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CORAM: N. J. JAMADAR, J.

DATED: 25th FEBRUARY, 2025

Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 17th January, 2025 passed by the learned District Judge, Jaysingpur, whereby the appeal being, Misc. Civil Appeal No.3 of 2025, preferred by the petitioners came to be dismissed affirming the order passed by the learned Civil Judge in Regular Civil Suit No.79 of 2019 dated 18th January, 2025 rejecting the application for temporary injunction to restrain the defendants from causing obstruction to the use of a portion of the land out of Gat Nos.132 for plying vehicles for transportation of the stone/crushed sand to and from the stone crusher run by the plaintiffs at their land bearing Gat No.133/2/4-5.

3. It was the case of the plaintiffs – petitioners that there were negotiations between the plaintiffs and defendants and the defendants had agreed to allow the plaintiffs to use a portion of land for the purpose of transportation of the stone to, and crushed sand from, the stone-crusher of the defendants and for that a consideration of Rs.1,00,000/- was agreed to be paid and the said amount has, in fact, been paid by the plaintiffs to the defendants. However, later on, the defendants started to obstruct the vehicles of the plaintiffs. Hence, the suit to restrain the defendants from causing obstruction to their access to the stone-crusher.

4. In the said suit, the plaintiffs filed an application for temporary injunction. By an order dated 1st January, 2025, the learned Civil Judge was persuaded to reject the application. In the view of the learned Civil Judge a suit for injunction was not maintainable as the plaintiffs had an alternative remedy of approaching the Mamlatdar under Section 5 of the Mamlatdar's Courts Act, 1906.

5. The learned District Judge concurred with the findings of the learned Civil Judge. It was, *inter alia*, noted that the plaintiffs entire claim rested on the consideration, which the plaintiffs had allegedly paid to the defendants. There was no

document to evidence the transaction. Therefore, the plaintiffs were not entitled to take benefit of the doctrine of part performance under Section 53A of the Transfer of Property Act, 1882, as there was no registered instrument.

6. Mr. Dalvi, the learned Counsel for the petitioners, submitted that there are documents, which evidence payment by the plaintiffs to the defendants as the payments were made through banking channels. The defendants had initially given permission for use of the road on payment of consideration. If the injunction is not granted, the plaintiffs would suffer irreparable loss as the business of stone-crusher would come to a stand to still.

7. I have perused the material on record. It is imperative to note that there is no document which evidences the alleged transaction between the plaintiffs and defendants. The learned District Judge observed that the plaintiffs cannot claim the benefit of doctrine of part performance under Section 53A of the Transfer of Property Act as there was no document, much less a registered one.

8. The edifice of the plaintiffs case was built on the alleged amount paid by the plaintiffs to the defendants for the use of the subject road. Even if the case of the plaintiffs is taken at

par, at best, it was a case of permissive use of the subject land. That does not confer any right on the plaintiffs and a corresponding obligation on the defendants to allow the plaintiffs to continue to use the defendants land, for the purpose of transportation of stone/crushed sand.

9. The learned Civil Judge as well as the learned District Judge have thus taken a correct view of the matter. No interference is warranted in exercise of the supervisory jurisdiction.

10. The petition stands dismissed.

[N. J. JAMADAR, J.]