

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9250 OF 2025

Shankar Baburao Rajage

...Petitioner

Versus

Vilas @ Pandurang Rangnath Deshpande
and ors.

...Respondents

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Mr. Rajesh Datar, Dushyant Pagare, for the Petitioner.

Mr. Surel Shah, Senior Advocate, a/w Venkatesh Shinde, for
Respondent Nos.1 to 3.

Mr. A. C. Bhadang, AGP for the State, for Respondent No.3.

CORAM: N. J. JAMADAR, J.

DATED : 6th AUGUST, 2025

ORDER:-

1. The petitioner takes exception to a judgment and order dated 25th April, 2025 passed by Sub-Divisional Officer, Vita, in RTS/Appeal No.367/2025 under Section 23 of the Mamlatdar's Courts Act, 1906 ("the Act, 1906"), whereby the revision application preferred by the petitioner against a judgment and order passed by the Tahsildar, Atpadi on 26th September, 2024, thereby dismissing the application preferred by the petitioner under Section 5 of the Act, 1906, came to be dismissed by affirming the said order passed by the Tahsildar.

2. The petitioner had purchased portions of land admeasuring 5 R and 40 R, out of Gat No.11564, situated at village Gomewadi, Taluka Atpadi, District Sangli, vide registered

Sale Deeds dated 26th September, 1995 and 29th November, 2005, respectively, from Vilas alias Pandurang Rangnath Deshpande, respondent No.1. The petitioner claimed that under the said Sale Deed respondent No.1 had agreed and confirmed that the petitioner would have 10 ft. wide access from the southern side of Gat No.1564.

3. Respondent No.1 and co-respondents obstructed the said access to the petitioner's land bearing Gat No.1564. The petitioner filed Suit No.7 of 2025 under Section 5 of the Act, 1906 for removal of the obstruction.

4. The Tahsildar had a site inspection. A panchnama of the site inspection alongwith map was drawn. After hearing the parties, the Tahsildar dismissed the application observing, *inter alia*, that the petitioner had access to the suit land from the way carved out of Gat No.1556 which was given by Shankar Baburao Rajage.

5. The Sub-divisional Officer found no infirmity in the aforesaid order passed by the Tahsildar. Hence, the revision application came to be dismissed by the impugned order.

6. Mr. Datar, the learned Counsel for the petitioner, submitted that the Tahsildar and the Sub-divisional Officer have approached the controversy from a patently incorrect

perspective. The existence of the road referred to in the order of the Tahsildar was nowhere the subject matter of the inquiry. Though in the map a road is shown to exist on the western side of the house and land of the petitioner, there was no material to show that the petitioner could access the said road to reach Bhivghat-Atpadi road. Therefore, the impugned orders cannot be sustained.

7. In opposition to this, Mr. Surel Shah, the learned Senior Advocate for the respondents, submitted that the petitioner, despite having an access which was provided under the first Sale Deed dated 26th September, 1995, unjustifiably demands access through the land of respondent No.1. Attention of the Court was invited to the description of the property sold under the first Sale Deed dated 26th September, 1995.

8. I find substance in the submission of Mr. Shah. The boundaries of the 5 R land sold under the Sale Deed dated 26th September, 1995, clearly record that a 10 ft. wide road on the western side of the said 5 R land was kept for the access of the purchaser. It is imperative to note that the claim of the petitioner stems from the acquisition of the land under the Sale Deeds. Thus, the source of the right of way is the grant under the Sale Deed. Since the rough map drawn during the course of

site inspection clearly records the existence of the said way on the western side of the portion of the land bearing Gat No.1564, which consists of the house of the petitioner, and it corresponds with the 10 ft. wide access granted under the said Sale Deed, the authorities were justified in rejecting the claim of the petitioner for right of way through the portion of the land of respondent No.1, which falls on the eastern side of the petitioner's portion of the land. Therefore, no interference is warranted in the impugned order.

9. Mr. Datar, the learned Counsel for the petitioner, submitted that the petitioner may institute a declaratory suit and, in that event, the observations made by this Court ought not to influence the decision of the Civil Court.

10. It is needless to clarify that if the petitioner institutes a civil suit, the same shall be decided on its own merit and in accordance with law without being influenced by the observations in this order, which were confined to determine the legality, propriety and correctness of the impugned orders.

11. Subject to the aforesaid clarification, the petition stands dismissed.

[N. J. JAMADAR, J.]