

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17497 OF 2025

Prakash Pundlik Tidke And Anr ...Petitioners

Versus

Hirabai Vasudev Bankar And Ors ...Respondents

Mr. Girish Agrawal, for the Petitioners.

Mr. Sachin Gite, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 21st APRIL, 2026

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 10th October, 2025 passed by the Sub-Divisional Officer, Dindori, in Civil Revision Application No.108/2024, whereby the revision application preferred by respondent Nos.1 and 2 against an order passed by the Tahsildar in Vahivat Case No.10/2022 dated 28th October, 2024, came to be allowed by setting aside the said order passed by the Tahsildar under Section 5 of the Mamlatdar's Courts Act, 1906.
3. The controversy between the parties lies in a narrow compass.

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4. The petitioners were the original holders of the property bearing Gat No.87 admeasuring 1 H. 65 Are. Under a registered Sale Deed dated 16th August, 1997, the Petitioner No.2 Balasaheb and Anusayabai Tidke, the mother of petitioner No.1 Prakash, sold the said land bearing Gat No.87 to respondent Nos.1 and 2. The petitioners are also the holders of the land bearing Gat No.85. Thus, while transferring the property, the parties agreed that, the petitioners-vendors shall have right to access their land bearing Gat No.85 through the land bearing Gat No.87, which was sold to the Respondent Nos.1 and 2, with a rider that the said right of way would be available to petitioner No.2 and Anusayabai till they hold the said land bearing Gat No.85 and in case of the transfer of the said land bearing Gat No.85, the transferee will not have a right of access.

5. Asserting that an impediment was caused to the said access, the petitioners preferred an application under Section 5 of the Mamlatdar's Courts Act. The Tahsildar caused a spot inspection of the disputed way. It was, *inter alia*, noted that the way did exist and impediment was caused by digging the road and placing thorny bushes. Thus, the Tahsildar, by an order dated 20th October, 2024, was persuaded to direct respondent

Nos.1 and 2 and the others to remove the impediment over the 12 ft. wide way to approach Gat No.85.

6. Being aggrieved, respondent Nos.1 and 2 preferred a revision application before the Sub-Divisional Officer. By the impugned order, the Sub-Divisional Officer was persuaded to allow the revision observing *inter alia* that there was discrepancy in the description of the way in the site inspection report and the claim of the petitioners. Adverting to the sale deed dated 16th August, 1997 executed by petitioner No.2 and Anusayabai in favour of respondent Nos.1 and 2, the Sub-Divisional Officer noted that respondent Nos.1 and 2 had made it clear that they had no objection for the use of the said way by the petitioners. However, it was found that in the land bearing Gat No.85, the petitioners were holding an area of 82.50 Are and the rest of the land was transferred in favour of respondent Nos.4 to 9, in the said revision application. Therefore, the Sub-Divisional Officer set aside the order passed by the Tahsildar.

7. Mr. Agrawal, the learned Counsel for the petitioners, submitted that, not only in the registered instrument, the right of way was reserved to the petitioners, but even in the pleadings before the Tahsildar, respondent Nos.1 and 2 had categorically admitted that the petitioners had the right to use the said way

and they had no objection for the use of the subject way by the petitioners. Yet, the Sub-Divisional Officer, has set aside the well reasoned order passed by the Tahsildar. The revisional authority has clearly transgressed the revisional jurisdiction, submitted Mr. Agrawal.

8. In opposition to this, Mr. Gite, the learned Counsel for respondent Nos.1 and 2, would submit that the petitioners right to access Gat No.85 through the land bearing Gat No.87, which was sold by the petitioners to Respondent Nos.1 and 2 under the sale deed dated 16th August, 1997, was, in a sense, personal to the petitioners. It was co-terminus with the ownership of the petitioners over land bearing Gat No.85. Under the guise of the exercise of the said right of way, the transferee of the petitioners were trying to establish a right of way over the subject way. Mr. Gite further submitted that the subject way cannot be used in exercise of easementary right.

9. A bare perusal of the sale deed, especially clause (11) thereof, makes it abundantly clear that the parties had agreed that the petitioners would have the right to access their land bearing Gat No.85 through the land bearing Gat No.87, which was sold to respondent Nos.1 and 2, till they continued to hold the land bearing Gat No.85. It was further aggrieved that, the

transferee of the petitioners would not be entitled to have the said access. The stand of respondent Nos.1 and 2 before the Tahsildar was in consonance with the aforesaid stipulation in the sale deed.

10. It would be contextually relevant to note that the existence of such way has not been controverted. On the contrary, the spot inspection report, specifically adverts to the existence of the said way and also the impediment caused in its use. The order passed by the Tahsildar did not suffer from any legal infirmity or such perversity as would warrant interference in exercise of the revisional jurisdiction. In these circumstances, the Sub-Divisional Officer could not have interfered with the order passed by the Tahsildar in exercise of the revisional jurisdiction.

11. So far as the grievance of respondent Nos.1 and 2 that, by taking undue advantage of the right of way reserved in favour of the petitioners, the transferees of the petitioners and other adjoining holders were trying to establish a right of way over the subject way, the same could have been taken care of by directing that the right of way would be available to the petitioners only and subject to the stipulation in clause (11) of the sale deed. Such a direction would meet the ends of justice.

12. Hence, the following order:

: O R D E R :

- (i) The petition stands partly allowed.
- (ii) The impugned order passed by the Sub-Divisional Officer stands quashed and set aside.
- (iii) The order passed by the Tahsildar stands restored subject to the following conditions:
 - (a) The right of way over the subject way shall be confined to the petitioners till they hold the land bearing Gat No.85.
 - (b) The right of way will be treated as a grant under the sale deed dated 16th August, 1997, and not by way of an easement.

The petition stands disposed.

[N. J. JAMADAR, J.]