
(1992) 03 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 641 of 1992

Suresh Sopan Kadam and Others	Vs	APPELLANT
Jagannath Genu Kadam and Another		RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1992) 2 BomCR 619

Hon'ble Judges : A.A. Cazi, J

Bench : Single Bench

Advocate : C.R. Dalvi and S.M. Mhomone, for the Appellant; A.V. Anturkar, for the Respondent

Judgement

A.A. Cazi, J.—Rule. Returnable forthwith.

2. Mr. Anturkar waives service on behalf of the respondents.

3. Heard.

4. This writ petition is directed against the orders of the two Lower Courts, one being the Trial Court and other being Appellate Court, rejecting the petitioners' application for interim injunction restraining the respondents from preventing the petitioners from using a particular right of way.

5. The facts are as follows: Different petitioners are owners of different lands bearing Gat Nos. 702, 703, 704, 706, 707, 708, 709, 719, 721, 722 and 723 situate at Village Mahalung, Taluka Malshiras, District Solapur. The respondents are owners of lands bearing Gat Nos. 711 and 674. The position of the various lands and disputed way can best be understood by referring to the plan which is at page 58 of the paper book which is a Xerox copy of the plan that was drawn up by the Commissioner who was appointed by the Trial Court to visit the site and draw up the plan. I have now marked by red ink the markings "E-1", "D-1" and "D-2" showing three different points in order to make expression easier. Akluj-Mahalung Road runs east west and on page 58 it is shown right at the

bottom. From this road going perpendicularly upwards, i.e., northwards, there is a cart-way. This cart-way is shown on the said plan as starting from point A and going to points B, E and E-1 in a straight line. As one proceeds northward from point A to point E-1, and then at E-1 takes a right turn (turns eastward), then we reach point F. The respondents denied that the petitioners had any right of way between points E and E-1 to F and sought to prevent the petitioners from using this disputed portion as a cart-way. The petitioners therefore filed the suit (Suit No. 224 of 1991) in the Court of Civil Judge, Junior Division, Malshiras seeking a permanent injunction restraining the respondents from obstructing their right of way over the disputed portion.

6. It will be seen that for the owners of Gat Nos. 704, 705 and 708 the only way as can be seen from the plan at page 58 to go to Mahalung Road is through the disputed or claimed way. So also is the position of the owners of Gat Nos. 702 and 703 though these lands are not shown on the abovesaid plan. If they prevented from using that way they have to make their way through the lands belonging to others. Now, both the Courts below have held that as on the date of the suit the disputed cart-way as claimed by the petitioners was in use and was in existence. However, they have disallowed the petitioners claim only because they observed that it is for the petitioners to show that they have been using this way for a sufficiently long period of time so as to establish their right of easement. Now, having arrived at the finding the disputed cart-way existed, both the Courts have, in my opinion, given a decision which would cause great injustice. Normally the interim orders are passed so as to maintain the status-quo. The status-quo would require, on the respective cases of both the parties and on the findings by both the Courts below, the continuance of right of way to the petitioners until the final decision of the suit.

7. Mr. Anturkar, learned Counsel for the respondents, stated that respondents would not obstruct the petitioners' usage of portion between E and E-1 as the cart-way and that the respondents would agree to an arrangement to a cart-way between points D and D-1, D-1 and D-2, and D-2 and F and for this purpose portions of respondents' land bearing Gat No. 674 could be used. Mr. Anturkar says unless the petitioners show that this would cause inconvenience to them they should be allowed, as an interim arrangement, to use the suggested alternative way and they may not be allowed to use the disputed way until the suit is finally decided. This alternative arrangement is not agreeable to the petitioners. In these circumstances, in the interest of justice, the status-quo requires to be maintained as regards the user of the disputed portion of the roadway by the petitioners. This would have to be continued until the disposal of the suit. The approach of both the Courts below has been quite contrary to the judicial approach in matters of interim orders. The judicial approach should be to maintain the status-quo unless there are strong and exceptional reasons to alter the status-quo.

8. Hence, rule is made absolute in terms of prayer (b).

Liberty to the respondents to move the Trial Court (a) for expediting the hearing of the suit and (b) for an order for monthly deposit to be made by the petitioners to be appropriated towards any compensation that might be held to be payable by the petitioners if they finally fail in the suit.

Certificated copy to be expedited.