

MHBU010002332023



R.C.A.NO.08/2023
Samadhan Ambhore
Vs.
State and Others

ORDER BELOW EXHIBIT NO.18
(Passed on this 25th day of July 2023)

1] Instant application has been filed by plaintiffs/appellants for restraining respondents No. 1 to 3 from creating the way through disputed portion i.e. through alleged North-South and South-North of Mangrual Navghare Babhulgaon shiv. Learned Counsel of appellants/plaintiffs has filed the notices which are issued by concerned Talathi of Mangrual Navghare to the plaintiffs/appellants by informing them to remain present on the spot on 26.7.2023. Learned Counsel of appellants/plaintiffs submitted that they had applied to the Tahsildar, Chikhli and requested them not to create any way from disputed portion as appeal is pending. It is pointed out by learned Counsel of appellants/plaintiffs that concerned Revenue Officer has passed the order that in case, there is stay order, then Talathi should not proceed for creating way from disputed spot. Therefore, learned Counsel of plaintiffs/appellants submitted that in case, respondents No. 1 to 3 are not restrained from creating way from their fields/from disputed spot, then appellants/plaintiffs will suffer irreparable loss and entire purpose of preferring appeal would become infructuous.

2] Learned APP Smt.Saoji-Dehpande has appeared in the matter

for respondents No. 1 to 3 and submitted her say that suit has been already dismissed on merit. Therefore, respondents cannot be restrained from performing their duties. Therefore, she requested to reject application (Exh.18).

3] I have heard learned Counsel of appellants/plaintiffs and learned APP for respondents No. 1 to 3. Learned Counsel of appellants/plaintiffs has filed notices issued by appellant Samadhan Ramrao Ambhore, Atmaram Shriram Yelwande, Sharad Shivaji Ambhore and Sanjay Shivaji Ambhore and thereby they are directed by revenue authority to remain present on the spot inasmuch as they are intending to clear Babhulgaon-Mangrul Shiv Way and they are doing such act on 26.7.2023. Today the date is running 25.7.2023. Appeal is pending before this Court in which impugned judgment and decree has been challenged. Appeal is nothing but the continuation of suit. Therefore, in such circumstances, it is not desirable to destroy the subject matter and dispute appears to be the right of parties regarding approach way. In such circumstances, if respondents No. 1 to 3 are not restrained from creating the way as stated in the notice as mentioned above on 26.7.2023, then entire purpose of preferring the appeal would become infructuous. As such, respondents No. 1 to 3 needs to be restrained from creating the way as stated in their notices till the decision of Exh.5 temporary injunction application. In the result, following order is passed.

ORDER

1] Respondents No. 1 to 3 are hereby restrained from creating the way from the disputed portion as mentioned by the official of respondents in the notices [**i.e. Babhulgaon-Mangrul Shiv Rasta**] which are served on appellants and which are to be executed on

26.7.2023 till decision of (Exh.5) temporary injunction application.

2] No order as to cost.

[Order is passed in presence of learned Counsel of appellants/plaintiffs Shri Kavimandan and learned APP Smt.Saoji-Deshpande.]

Buldana
Date:25.7.2023

(R.N. Mehare)
District Judge-1,
Buldana