

Order below Exhibit-5

1. The plaintiffs have filed an application seeking a **temporary injunction** in the present case to restrain the defendants from carrying out any earthworks or altering the level of the road in the disputed area, particularly a **7-foot wide cart road** located in the **Bhalia area**. The plaintiffs assert that the earthworks are obstructing the natural flow of monsoon rainwater, which is causing substantial damage to their agricultural land and crops, specifically their **groundnut crop**.
2. The defendant in his defence, it is submitted that the actual water flow is from south direction to north direction and not on road. Further, it is submitted that the main reason behind gathering of water in plaintiff's land is, the flow of water is running from plaintiff's land to karibai's land. Karibai is the relative of the plaintiff and both have adjoining lands. They had built a wall between their land for obstruction of natural flow water from north to south direction. Further, it is submitted that the plaintiff diverted the flow of water towards the road of surpur village. Moreover, it is submitted that there is an alternate way of drainage of water but the plaintiff does not want to use that alternate way. At the end, the defendant is praying to reject the present application.
3. The Court, having heard the submissions of both parties, gone through the panch rojkam of court commissioner produced vide mark 7/1 and sketch produced vide mark 7/2, examined the documents, and considered the arguments.
4. **Plaintiffs' Submissions:**
It is the submission of the plaintiff that plaintiff is agricultural landowner and assert that the **7-foot wide road** in the **Bhalia area** has been used for years to facilitate the passage of carts and agricultural implements and use for drainage of rainy water. Further, claimed that the defendants have begun raising the level of the road by filling it with soil using tractors, thereby obstructing the natural flow of monsoon rainwater, which traditionally flows from south to north across the plaintiffs' fields. The plaintiffs assert that this obstruction is causing their agricultural land to be flooded, leading to damage to their crops, especially during the monsoon season. The plaintiffs argue that this interference will lead to irreparable financial losses as their crops will be damaged, particularly in the event of further heavy rainfall.
5. **Defendants' Submissions:**
The defendants argue that the flow of water is not as claimed by the plaintiffs and that the natural water flow is being obstructed not by the roadworks but by an embankment constructed by a third party, **Kariben Jawabhai**, near the plaintiffs' field. Further, it is submitted that actually plaintiff should filed suit against kariben but kariben is his close relative thus he did not filed suit against her and filed suit against defendants.

Issues Considered by the Court:

It is settled principle of law that for benefit of rule of temporary injunction, the plaintiff has to bring three main ingredients which are necessary for granting temporary injunction. The plaintiff has to show that there is prima facie case is made out. Second, plaintiff has to proved that balance of convenience is in his favor and last one is, if temporary

injunction is not granted the plaintiff shall suffer such irreparable loss which can not be full fill by way of money. Now, this court has to decide following issues:-

- A. Whether the plaintiff proves that there is prima facie case is made out?
- B. Weather the plaintiff proves the balance of convenience in his favour?
- C. Whether the plaintiff proves that there is a irreparable loss?

Answer

- A. Affirmative.
- B. Affirmative
- C. Negative.

1. Prima Facie Case:

The Court acknowledges that the plaintiffs have raised valid concerns regarding the potential obstruction of the natural drainage of rainwater and the resulting damage to their crops. However, the defendants have provided a contrary explanation, stating that the water flow is impeded due to an embankment constructed by a third party kaliben between plaintiff and her land and not by the roadworks in question. This court has gone through the panch rojakam produced vide mark 7/1 and 7/2. It appears from panch rojakam that there is a way between plaintiff's land and defendant's land. Both lands are situated opposite directions and a 12 feet road divides them. So, it is transpired from record that the a path way situated between both parties. It is not yet clear from record that water is flowing in natural way from south to north. Defendant alleged that rain water is gathered because of wall which was built by kaliben between plaintiff and her land but such situation is also not brought on record. Thus, it is prima facie appears that the way is situated between two land i.e. land of plaintiff and defendant both bearing survey no. mentioned above para. Here it is view of the court that a prima facie case is made out.

2. Balance of Convenience:

The plaintiffs have demonstrated that the potential damage to their agricultural land and crops due to the roadworks is significant and may lead to irreparable loss. The defendant is admitted that there is an alternate way by which water can be drianged out but plaintiff is not using that road/way. It is an undisputed fact that land of both parties is divided by a 12 feets road. If rain water is not drained from such way then there is possibilities that it may be gathered in plaintiff's land. The **balance of convenience** favors the plaintiffs as the damage to their crops is more immediate and tangible, while the public interest in maintaining the road can still be addressed without altering the status quo at this stage.

3. Irreparable loss:

The plaintiffs have shown that if the earthworks continue, they could suffer substantial and irreparable financial loss, especially if their crops are damaged due to the obstruction of natural drainage. On the other hand, the defendants have not demonstrated that halting the works will cause them any irreparable harm, as the road is still functional and accessible for the time being. Although, the water gathers in land of plaintiff, it may damages crops of plaintiff but such act is not in that manner which is irreparable in nature, such loss can be determined by way of money. Thus, it appears to

this court that there is no such irreparable loss at this juncture. In light of the above findings, that plaintiff is failed to prove all three ingredients of temporary injunction. thus , in the interest of justice this court is inclined to pronounce the following order:-

Order

1. The present application filed under order 39 rule 1 for temporary injunction is hereby rejected.
2. Both parties are **directed to maintain the status quo** regarding the road in question and the natural flow of rainwater. Neither the plaintiffs nor the defendants are permitted to carry out any alterations to the road or interfere with the water flow in any manner until a final order is passed by the Court.

Signed and pronounced in open court on 24th april 2024.

Date : 24/04/2025

Krishan Manohar Singh Rathore

Place:- Mendarda

Principal Civil Judge

Civil Court, Mendarda

GJ01638