

MHNS140015402022

**R.C.S.No.303 of 2022****ORDER BELOW EXH.05**

Plaintiffs have moved the present application under Order 39 Rule 1 of the Code of Civil Procedure, praying for a restrain against the Defendants and persons claiming through them from entering into the suit properties and from constructing road upon the suit properties in execution of the order passed in Vahivat case no.9/ 2021 and R.T.S. no. 50/2022.

2. In short, it is the case of the Plaintiffs that the Defendants had instituted a case against the present Plaintiffs before the Tehsildar of Dindori. Without paying any attention towards the evidence that had come before the court, the matter was decided in favour of the Defendants. Hence, an appeal was preferred against the said judgment through R.T.S. case no. 50/2022. Herein, the judgment passed by the Tehsildar was upheld. This in turn, affects the right of the present Plaintiffs. The Plaintiffs apprehend that the real position of the suit properties has not come before the court. According to the Plaintiffs, it is imperative that he is able to prove his right upon his suit properties. Moreover, he believes that he will eventually prove that the Defendants have no right of way through the Plaintiffs property. In fact, according

to the Plaintiffs, the Defendants have been using alternative way to their respective properties and they do not require any road through the suit properties. Plaintiffs were compelled to institute the present suit, when the Defendants forcefully entered into the suit properties and threatened the Plaintiffs about constructing the road way to their respective properties. Through the present suit, Plaintiffs are seeking a declaration against the order that is passed in Vahivat case no. 9/ 2021 and R.T.S. no. 50/2022. The suit will take its own time to reach a conclusion. Plaintiffs are affirmative that a suit of such a nature is tenable as the orders passed are erroneous and unlawful. Hence it is prayed, that, in the meantime, while the suit is pending, an interim injunction be passed against the defendants so that the merits of the case are not frustrated.

3. On the other hand, the defendants have strongly objected to the present application stating that such an application is not maintainable as the very suit is not tenable in the eyes of law. Defendants have pointed out that the orders passed in Vahivat case no. 9/2021 and R.T.S. no.50/2022 are passed on merits and are therefore proper and correct. These orders cannot be challenged before this court as there is a bar in the Mamlatdar's Court Act 1906. Further it is pointed out that the Plaintiffs do not enjoy title over the suit properties and in fact the very description of the suit properties are improper. Without proving these basic aspects, the Plaintiffs cannot be entitled to any interim relief. According to the Defendants, they have been using

the disputed road for a considerably long duration. If the Defendants are restrained to execute the lawful order, the obstruction on the part of the Plaintiffs upon the road will continue. Defendants have availed heavy loans. With no or little access to the Road, Defendant would be subjected to a irreparable loss as they would have no access to their agricultural land. Hence, it is prayed that the present application be rejected.

4. Upon careful evaluation of both sides, the following points arise for my determination –

Sr.No.	Points for determination	Findings
1	Do Plaintiffs prove a prima facie case ?	In the Affirmative
2	Do Plaintiffs prove that an irreparable loss would be cause to the Plaintiffs if the application is rejected ?	In the Affirmative
3	Is the balance of convenience on the side of Plaintiffs ?	In the Affirmative
4	Are Plaintiffs entitled to a relief of temporary injunction as prayed ?	In the Affirmative
5	What order ?	As per final order

REASONS

5. I have gone through the application and say. I have heard both the sides on this point to a great extent. I have taken into consideration all the documents that both the parties have produced on record. The citations relied upon by the parties are also minutely

perused.

POINT NO. 1:-

6. The dispute in this matter is pertaining a Road way that is going through the suit properties. According to the Plaintiffs, Defendants have no right to go through the suit properties. Moreover, under the pretext of carrying out execution work, the Plaintiffs apprehend that the Defendant would construct a road way through their property. The Defendants in spite of having an alternative Road way to their own properties, are insisting upon the usage of this road way. On the other hand, the Defendants have specified that there is no alternative Road way to their properties. In fact, Plaintiffs are trying to cause a hindrance to the lawfully executable order through this suit, which, according to the Defendants should not be permitted.

7. In order to obtain an interim relief, Plaintiffs would have to prove that a prima facie case lies in their favour. The Plaintiffs claim to be enjoying title and possession over the suit properties. On the other hand, according to the Defendants, this claim is false and not tenable. Moreover, the very description of the properties is erroneous. I have gone through the 7/12 extracts of the suit properties. I clearly see that gat no. 245 is in the name of Shobha Dhage whereas gat no.421 is in the name of Manohar Dhage. The suit is still at an initial stage. It is not required that the merits of the case be looked into at this stage. The Plaintiffs have succeeded in showing this court that they have nexus

with the suit properties. The order below Vahivat case no. 9/2021 and R.T.S. no.50/2022 shows that the Plaintiffs and Defendant hold a dispute pertaining to a road which goes through the suit properties. The Panchanama recorded by the Tehsildar reveals that the road under discussion was a disputed Road.

8. According to the defendants, the orders below Vahivat case no. 9/2021 and R.T.S. no.50/2022 cannot be challenged before a civil court. In order to add strength to this argument, he has relied upon the observations which are made in a writ petition no.1657 of 2011.

Herein, it is observed that the provisions of section 5 of the Mamlatdar's Court Act 1906, contemplates removal of obstruction on the way of being used. Whether there is any alternative way or not, or then, two fields are situated in different villages or not, a totally irrelevant facts for the said purpose.

9. I find it necessary to mention at this point that both the parties have relied upon maps as well as google maps. At this juncture, it is difficult to conclude as to which map is the most reliable. All that I can gather is the fact that the Defendants are trying to remove an obstruction on the part of the Plaintiffs from the road which passes through the suit properties. It has come in the oral arguments that the obstruction is in the nature of laying stones, digging land, parking

vehicles on the way, so that the Defendants cannot use the road upon suit property . On the face, the obstructions that are under discussion are all temporary in nature. Clearly, even the Tehsildar has considered this road way to be a disputed one. Hence, unless, and until this dispute is not resolved, the Plaintiffs do seem to have a right of being protected.

10. The Defendants have raised a point pertaining to the maintainability of the suit as this court has no jurisdiction to entertain a suit of such a nature. According to the Defendants orders passed under the Mamlatdar's Court Act 1906, cannot be challenged before civil court. In answer to this argument, the Plaintiffs have relied upon an observation which is made in *Digambar versus Vasant (2022) 2 BCR 154*.

Herein, it is held that so far as the aspect regarding the jurisdiction of civil court to grant a relief, touching an order passed by Tehsildar under section 5 (2) of the Mamlatdar's Courts Act 1906, true it is that an order of the Mamlatdar in such a proceeding is reversible under section 23 (2) of that act. However, conspicuously, section 22 of the act clearly declares that any decision or order passed by the Mamlatdar would be subservient to the decision of a competent civil court in a proceeding referred before it. Hence, a party may approach a civil court and obtain any relief, even contrary to the decision of the Mamlatdar, setting it at naught.

11. When this aspect is taken into consideration, it appears that the plaintiffs have prima facie shown this court that a civil suit of such a nature can be tenable. Certainly, the merits of this aspect would have to be dealt with at the time of final hearing. However, at this juncture, it appears that the present court has the jurisdiction to deal with the matter. In the light of the discussions that are made in the above mentioned paragraphs, I feel that a prima facie case is established by the Plaintiffs. Accordingly, point number one deserves to be answered in the affirmative.

POINT NO. 2 :-

12. According to the Plaintiffs, there is an apprehension that the Defendants may enter upon their land and under the pretext of execution of order, carry out the construction of the road. If the same happens, the very purpose of this suit would be frustrated. The Plaintiffs strongly believe that the order passed below Vahivat case no. 9/2021 and R.T.S. no.50/2022 are erroneous and unlawful. In spite of making a request, for preparing a map, the same was ignored by the forums. To this, the defendants state that Plaintiffs cannot be permitted to encash upon this point as no independent prayer in this respect was made by the Defendants before the forum. Having said the same, it has come to my notice that the order explicitly states that such a request was made by the Defendants. Hence, the request of the present Plaintiffs was noticed by the forum. if the Defendants construct a road upon the suit properties, the very suit would be frustrated. This is a loss

that is irreparable. It cannot be compensated in terms of money.

13. On the contrary, the Defendant's claim that if they are not permitted to remove the obstruction caused by the Plaintiffs they will have no access to their respective properties. This in turn will affect their cultivation and repayment of loan. At this juncture, it would be relevant to look at the admission given by the Defendant in the cross-examination that was conducted before the concerned authorities. Therein he has admitted that there is a Road Way to his property from the northern side. Under such circumstances, it appears that no much loss would be caused to the Defendants as compared to the Plaintiffs. In accordance I answer point number two in the affirmative.

POINT NO. 3 :-

14. Considering the pleadings and the documents on record, currently the balance of convenience leans in favour of the Plaintiffs. Their apprehension comes across as genuine and it appears that the same needs to be protected during the pendency of the suit. Accordingly, I answer point number three in the affirmative.

POINT NOS.4 AND 5:-

15. In the light of the observations made in the above mentioned points, I opine that an interim injunction can be granted as the necessary ingredients are satisfied. Accordingly, I answer this point in the affirmative and proceed to pass following order-

Order

1. Application is allowed.
2. Defendants and persons claiming through them are hereby restrained from entering into the suit properties and from carrying out any work of construction upon the suit property.
3. Both parties to note.

Date – 07.06.2023.

(Smt. K.N. Gowariker)
Civil Judge Jr. Division,
Dindori
(MH02737)