ORDER BELOW EXH.NO.05
(Passed on 07-10-2020)

1] By this application, the plaintiffs are claiming Temporary Injunction against the defendant under ***Order 39 Rule 1 and 2 r/w Section 151 of the Code of Civil Procedure, 1908***.

2] Read application and written statement cum reply. Heard, Shri. H. P. Karmore, the learned advocate for the plaintiffs and Shri. P. D. Rajnekar, the learned advocate for the defendant. Read written notes of argument filed by the plaintiffs below Exh.19.

3] It is contended by the plaintiffs that they have purchased field Survey No. 17/2, area 2.33 HR of village Tiosa Part-II, Tq. Tiosa, Distt. Amravati which is bounded as follows;

To the East	-	The field of Manikrao Dave
To the West	-	The field of defendant (Survey No.15)
To the North	-	The field of Sotargir Maharaj Devasthan
To the South	-	The field of Gajanan Manikrao Dave.

4] The above said field was purchased by the plaintiffs from Haidarshaha Kalushaha R/o. Tiosa, Tq. Tiosa, Dist. Amravati on 16.06.2005. The field of plaintiffs is irrigated land. There is well and electric motor pump in the field. The plaintiffs have exclusive way for the above said field from village Tiosa-Satargaon Government road towards North, then it turns towards West which

passes from Government canal up to East-South corner of field of defendant i.e. Survey No.15 and then towards North from inside of Eastern dhura (boundary) of field Survey No.15 of defendant. As such, the plaintiffs have way to approach their field which shown by letters '**ABCD**' in the plaint map. The way shown by letters '**CD**' which is of 12 feet in width and the same is the subject matter of the suit. (hereinafter referred to as **"Suit Way"**).

5] It is further contended by the plaintiffs that their vendor during his lifetime for more than 60 years continuously, peacefully, openly used the suit way for carrying bullock-cart, tractor, agricultural implements and labourer. The plaintiffs have purchased said field in the year 2005 and since then they are continuously, peacefully and openly using the suit way for carrying bullock-cart, tractor, agricultural implements and for taking labourer. As such, the plaintiffs got easementary rights of necessity and prescription over the suit way.

6] They further stated that before purchasing above said field by the plaintiffs, there was kiln of bricks (Vitabhatti) of plaintiff No.1 and his father Subhanshaha in the field Survey No.15 (now owned by the defendant) since 20 years till the year 2011. The plaintiffs have knowledge about the existence of suit way. The vendor of defendant Shri. Gangadhar Vishawnath Wankhade used to execute consent deed in each year in favour of plaintiff No.1 and his father for running kiln of bricks. They were

using suit way for carrying bullock-cart, tractor, agricultural implements and labourer on the kiln. The defendant has purchased his field Survey No.15 in the year 2018. The field of defendant is fallow (padit), but there is kiln. Prior to eight days of filing of the suit, the defendant obstructed first time from using the suit way, therefore, the plaintiffs rushed before the Court for seeking relief against the defendant. Accordingly, the plaintiffs prayed to allow the application thereby restraining the defendant from causing obstruction to use the suit way.

7] The defendant resisted the application by written statement (Exh.13). Vide pursis (Exh.14) he adopted written statement as reply of this application. The defendant denied all adverse allegations made against him in the plaint. The defendant specifically pleaded that the plaintiffs have another way available through Satargaon-Talegaon Thakur shiv, the vendor of plaintiffs and owners of Survey No.17/2, 17/1-A, 17/1-B and 17/1-C are using said shiv as way to their fields. Therefore, the plaintiffs have no voice to claim injunction against the defendant. The plaintiffs have filed suit against the defendant with intention to cause damage. The plaintiffs have filed wrong and unclear plaint map for misleading the Court. The attempt of plaintiffs is only to create new and convenient way. The plaintiffs have no right of way from Survey No.15 of the defendant. Hence, the defendant prayed to reject the application.

8] Upon considering the contentions of both the parties, following points arise for my determination and I have recorded my findings thereon for the reasons given thereunder.

	Points	Findings
1.	Whether the plaintiffs have established prima facie case in their favour ?	**In the Negative**
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	**In the Negative**
3.	Whether the plaintiffs would cause irreparable loss, if injunction is refused ?	**In the Negative**
4.	What Order ?	**Application is rejected.**

R E A S O N S

AS TO POINTS NO.1 TO 3

9] All points are interconnected with each other and prima facie evidence thereupon is appears to be common. Hence, all points are taken jointly for discussion.

10] The plaintiffs have filed xerox copies of sale-deed, 7/12 extract of Survey No.17/2, 7/12 extract of Survey No.15, agreement, affidavit of Raju @ Rajendra Manik Dave and copy of map of Survey No.17 obtained from Dy- TILR office Tiosa.

11] The ownership of plaintiffs and defendant over their respective fields are not at all disputed by the parties. It clearly

shows that the plaintiffs are owner of Survey No.17 and the defendant is the owner of Survey No.15 of village Tiosa Part-II, Tq. Tiosa, Dist. Amravati. Only question is to be determined that whether there is way available to the plaintiffs field Survey No.17 from the Eastern boundary of field Survey No.15 owned by the defendant which is shown by letters **CD** in the plaint map.

12] On perusal of registered sale-deeds of the plaintiffs, it appears in writing that सदर शेत जमीनीचा रस्ता जुन्या वहीवाटीप्रमाणे राहील. But, what was the old use and occupation pertaining to way is not at all mentioned in these sale-deeds. Therefore, these sale-deeds are not able to explain that the suit way was only the way available to the plaintiffs for approaching to their field Survey No.17. Moreover, the plaintiffs have not filed affidavit of the vendor to show that there was only way available to his fields shown by letters **CD** in the plaint map.

13] It is pertinent to mention here that the plaintiffs contended that the suit way is available to their field from 60 years, then the said way was required to be taken in the revenue record of Survey No.15 of defendant in the column of other rights. But the 7/12 extract of Survey No.15 filed by the plaintiffs does not reveal that there is right of way cast upon field Survey No.15 in respect of Survey No.17 presently owned by the plaintiffs. Moreover, it is required to mention here that the plaintiffs have

filed map of Survey No.17 obtained from the office of Dy. TILR, Tiosa, Tq. Tiosa, Dist. Amravati. On perusal of said map, it shows that from Eastern side of Survey No.17, there is Survey No.272, 273, 274 from Western side of Survey No.17. There are fields Survey No.15, 16 and 18. It means if the plaintiffs have only the suit way available for approaching to their field, then the owners of Survey No.16 and 18 are using which way to approach their fields are not at all clear from the record. Taking into consideration this aspect, it appears that the field Survey No.16 and 18 are appears from the upper side of field Survey No.15 of the defendant, then they ought to have claim for the way from field of Survey No.15 of defendant. But there is no dispute brought on record about way of owners of Survey No. 16 and 18. It means there is another way available to them for approaching to their fields. Neither of the parties brought on record any old documents to show existence or non-existence of suit way from the field of defendant. Under such circumstances, it was necessary to file affidavits of owners of Survey No.16 and 18 or adjacent cultivators who are well acquainted with the fact to show that only the suit way is available to the plaintiffs to approach their fields. But the plaintiffs have filed affidavit of owner of field Survey No.274/2 whose field in map appears from the East side of the field of plaintiffs whose nexus with the suit way does not appear. Therefore, he can not be said well acquainted with the fact. Under such circumstances, mere say of owner of Survey No. 274/2 is not

helpful to hold that there is way as alleged by the plaintiffs.

14] Moreover, it is pertinent to mention here that the plaintiffs claimed that the suit way is 12 feet in width, then there should be some record to show as to how 12 feet width road was created from the field owned by the defendant. But, the plaintiffs did not bring on record to show this aspect. Therefore, the contention of plaintiffs is not appears to reliable.

15] In written notes of argument, the plaintiffs have submitted that taking undue advantage of the situation of Corona pandemic, the defendant erected two pillars by keeping space of 12 feet width on 16.09.2020 at the point of suit way intending to fix iron gate for closing the suit way. Therefore, the plaintiffs have lodged report to the Police Station, Tiosa. But the police did not take action against the defendant being the dispute is civil in nature.

16] The plaintiffs categorically pleaded in the plaint that the field of defendant was fallow (padit) and there was kiln of bricks of plaintiffs and his father in the field of Survey No.15 of defendant. They were using suit way for doing acts pertaining to their kiln. It clearly shows that when the plaintiffs were doing act of kiln of bricks in Survey No.15, at that time they might have used suit way for their use as the land of Survey No.15 itself was fallow (padit). Perhaps, the field Survey No.15 had given for the purpose

of kiln of bricks by the vendor of defendant, but it does not mean that the defendant is binding to allow the plaintiffs for doing the same business of kiln of bricks in his purchased field or it does not mean that the way which was using by the plaintiffs from the field Survey No.15 of the defendant shall be allowed for further use of the field of the plaintiffs Survey No.17. Therefore, the defendant is not binding to allow the plaintiffs to use his own field for the use of fields owned by the plaintiffs, when the plaintiffs have no nexus with the field Survey No.15. Under such circumstances, there is no prima facie material on record to show that the plaintiffs have right of way over the field of defendant as claimed in this application. On the contrary, if the plaintiffs have dispute about the right of way, then they can approach before the proper authority for seeking way to their fields as provided in law. Under such circumstances, the plaintiffs have failed to establish prima facie case in their favour, if the plaintiffs are allowed to use the suit way by ordering injunction in their favour, then more hardship would cause to the defendant and it will cause loss of land of Survey No.15 of defendant. It suggests that the plaintiffs have no balance of convenience in their favour. So also, by way of loss of land, irreparable loss would cause to the defendant. On the contrary, no loss would cause to the plaintiffs as they have not brought on record material to show that their field Survey No.17 is remained fallow. It means they have cultivated for the crop. In view of the above discussion, the plaintiffs are not entitled to grant

temporary injunction in their favour. Accordingly, I answer points No.1 to 3 in the Negative and in answer to point No.4, I pass the following order.

ORDER

1] The application for Temporary Injunction **(Exh.05)** is hereby **Rejected**.

2] Costs in cause.

(Order is dictated and pronounced in open Court.)

Sd/-
(Liladhar D. Korde)
Civil Judge (Junior Division),
Tiosa.

Place: Tiosa
Date : 07-10-2020