

: Order below Exh.5 and Exh.19 in R.C.S.No.116/2014 :
(Passed on 20.10.2015)

1. Application at Exh.5 is filed by the plaintiff and application below Exh.19 is filed by defendant. Both parties are praying for temporary injunction against each other. Plaintiffs have stated in their application that suit property Survey No.26/2/2 is owned and possessed by them. Agricultural land bearing Survey No.27/2-A is owned and possessed by defendant No.1. This land is situated at eastern side of the suit land. Agricultural land bearing Survey No.27/2-B is owned and possessed by defendant No.5. This land is situated at southern side of the land bearing Survey No.27/2-A. Defendant No.2 to 4 are infact cultivating the land bearing Survey No.27/2-B. Partition of Survey No.27 and 28 was took place and accordingly these land holders are using approach road to reach their respective field and this approach road is situated on the common boundary of Survey No.27 and 28. There is public road situated at northern side of suit property and also at northern side of property of defendants i.e. Survey No.27 & Survey No.28. Thus, defendants have available approach road to reach their fields as under :

On coming through public road, defendants reached the point of common boundary of Survey No.27 and 28. Thereafter, defendants are having available this common boundary road, which reaches to Survey No.27/2-A and Survey No.27/2-B. This road is ancestral and permanent. No other approach road is and was in use of defendant except this road. Defendants are using this road since long. Survey No.27/2-B, Survey No.27/2-A are come into existence after division of Survey No.27. Erstwhile owner of Survey No.27/2-B was plaintiff No.2 and he sold this property to defendant No.1 to 4 on 30.06.1998. The recital in the sale deed dated 30.06.1998 contained description of this approach road.

There is no road which passes through common boundary of Survey No.26 and 27. Plaintiff No.1 is residing at Shahada and plaintiff No.2 is old aged person. By taking disadvantage of this fact,

defendants trying to make approach road from common boundary of Survey No.26 and 27. Defendant No.2 borrowed soil by tractor on 06.12.2014 and unload it on the boundary of Survey No.26 and 27. Again on 12.12.2014 defendant No.1 to 4 were trying to erect road on the boundary of the field of plaintiff. Upon obstructing them, defendant threatened plaintiff. Thus, defendants unlawfully tried to erect road from the field of plaintiff. Therefore, plaintiff prayed for injunction against defendants.

Now, defendants filed their written statement and counter claim at Exh.17. It is contended by defendants that there is common boundary at the western side of Survey No.27/1, 27/2-A and 27/2-B. This common boundary is used as approach road to reach Survey No. 27/2-A and 27/2-B. The manner of using this boundary by bullock-cart is that :- one wheel of bullock-cart is in the suit land and another wheel of bullock-cart is in the land bearing Survey No.27/2-A and 27/2-B. This is ancestral approach road available to the defendants since last 48 years. This is the only road available to the defendants. Thus, according to the defendants the approach road available to them is situated in between boundaries of Survey No.26 and 27. Therefore, defendants filed counter claim to restrain plaintiff from causing obstruction to defendants to reach their field.

In short, the contention of plaintiff is that there is no approach road situated in between Survey No.26 and 27. Land holders of Survey No.27 have available approach way on the common boundary of Survey No.27 and 28. On the contrary, according to the defendants, land holders of Survey No.27 have available approach way from the common boundary of Survey No.26 and 27.

3. Both parties have filed several copies of sale deeds on record to support their respective claim.

4. I have heard arguments of both sides at length. Perused the documents placed on record. Following points are raised for

determination of the application.

<u>P O I N T S</u>	<u>A N S W E R</u>
1. Whether prima facie it is proved that there is approach road situated in between Survey No.26 and 27, which is using by defendants since long and it is an ancestral approach road ?	No.
2. In whose favour balance of convenience lies ?	Plaintiff.
3. What order ?	As per final order.

R E A S O N S

5. As to Point No.1 to 3 : At the outset, I have to verify prima facie whether there is approach road situated in between Survey No.26 and 27 and which is using by defendants since long and whether it is ancestral. According to the plaintiff, there is no approach road situated in between Survey No.26 and 27. Defendant never used such common boundary as approach road to use their respective fields. But, according to defendants they are using this common boundary as approach road to reach their respective field. Therefore, prima facie onus lies upon defendants to prove at least prima facie that there is approach road situated in between common boundary of Survey No.26 and 27 to reach their respective fields.

According to the plaintiff, defendants can reach their respective field by using the common boundary of Survey No.27 and 28. This is the approach road available to defendants.

Now, let us evaluate prima facie, whether defendants discharged the onus lies upon them, as stated above, by producing relevant documents. If according to the defendants approach road is situated in between Survey No.26 and 27, then it is incumbent on the part of defendants to prove prima facie about existence of such road. Defendants relied upon several documents filed by them. Following documents are filed by them :-

- (a) Photographs are filed by defendants.
- (b) Copy of mutation entry No.968 about partition of Survey No.27 and 28.
- (c) Defendants filed village map of Mouje Untawad, where the property of plaintiff and defendants are situated.
- (d) Defendants filed copies of 7/12 extracts of Survey No.26/2-B, 27/1, 27/2-A, 27/2-B.
- (e) Defendants filed sale deed dated 02.06.2004 in respect of Survey No.27/1.
- (f) Defendants filed sale deed of Survey No.26/2/2 dated 31.07.2010.
- (g) Defendants also relied upon affidavits of Ramsing, Anita and Jayashri, who are labourers in the field of defendants.

I have perused all above documents. Photographs filed by defendants cannot prima facie relied upon for the obvious reason that they may be related to any field and it cannot be said that they must be related to the field of plaintiff and defendants. Affidavit of photographer and receipt of photos are not accompanied by such photographs. Therefore, it cannot be said that they are the photographs of alleged existence of road between Survey No.27 and 28.

Another document is certified copy of Mutation Entry No.968, it does not disclose about existence of alleged road between Survey No.26 and 27. I have peruse copy of village map. It has not disclosed that there is road between Survey No.26 and 27. Copies of 7/12 extract has not disclosed that there is road between Survey No.26 and 27 as alleged by the defendants. Copy of sale deed dated 02.06.2014 which is produced by defendants has also not disclosed about alleged existence of road between Survey No.26 and 27. Finally, the document the sale deed dated 31.07.2010 also not disclosed about existence of road between Survey No.26 and 27. Vague recital in that sale deed about approach road by itself is not sufficient to draw conclusion about existence of road between Survey No.26 and 27. Therefore, the sale deed dated 31.07.2010 is not helpful to the defendants.

Defendants have not filed affidavits of adjacent land holders i.e. farmers to the effect that there is existence of road between Survey No.26 and 27. Thus, prima facie there is nothing on record produced by the defendants in support of their claim about existence of road between Survey No.26 and 27.

6. Now, let us scrutinized prima facie evidence placed by the plaintiff on record. Plaintiff has filed on record copy of 7/12 extract of Survey No.26/2/2, 27/1, 27/2-B, 28/1. It is clear from these 7/12 extracts that properties of defendants are situated at eastern side of the Survey No.26/2/2.

Plaintiff has relied upon sale deed executed on 03.03.1966. This sale deed makes it very clear that Survey No.27 and 28 were owned by one and only owner i.e. Hiranman Devla Mahajan and Hiranman sold these properties to Manga Tukaram Patil. Shri.Manga Patil is the father of defendant No.2 to 4. **Another document i.e. sale deed dated 30.06.1998 relied by the plaintiff reveals that there is a road at eastern side of Survey No.27.** This specific recital fortifies the case of plaintiff that defendants have available approach road to reach their respective field which is situated in between Survey No.27 and 28, because Survey No.28 is also situated at eastern side of Survey No.27. **Another sale deed dated 12.06.2014 is the most important document. This document is filed by the plaintiff. The recital in the sale deed reveals that defendant No.2 to 4 sold Survey No. 27/2-A in favour of defendant No.1 i.e. Narendra Patil. The recital in the sale deed that ancestral approach road to reach Survey No.27/2/A is common. The said road is used by Narendra Patil and defendant No.2 to 4.** Now, defendant No.2 to 4 owned Survey No. 28/1 and by way of this sale deed they sold Survey No.27/2 to defendant No.1. Therefore, the reference in the sale deed about ancestral approach road is prima

facie definitely indicate about approach road in between Survey No.27 and 28. Thus, defendants have available approach road to reach their respective fields is situated in between Survey No.27 and 28 as prima facie record produced before me, reveals. The wording in the said sale deed that ancestral approach road to reach Survey No.27/2-A is common and it will be used by Narendra Patil and defendant No.2 to 4. Thus, defendant No.2 to 4 prima facie have available the approach road between Survey No.27 and 28 because Survey No.28 is admittedly owned by defendant No.2 to 4. Thus, the said reference in the sale deed about common road is necessarily have a nexus of approach road situated in between Survey No.27 and 28 and no other way. Thus, when defendants have available this approach road, they are not entitled prima facie to use common boundary situated in between Survey No.26 and 27. The contentions of defendants that one wheel of bullock-cart has in the field of plaintiff and another wheel of bullock-cart in the field of defendants and thus bullock-cart will reached to the field of defendants, is not prima facie tenable in view of approach road available to the defendants, as stated above. Thus, greater hardship would have been caused to the plaintiff if injunction application would have been allowed in favour of defendants. Therefore, it is necessary to restrain defendants to reach their field from the boundary between Survey No.26 and 27. Balance of convenience lies in favour of plaintiff.

Defendants failed to prove prima facie existence of road between Survey No.26 and 27. On the contrary, plaintiff prima facie proves that another approach road passes between Survey No.27 and 28 available to the defendants. Therefore, plaintiffs have established their prima facie case.

To sum up, I pass following order :

ORDER

1. Application at Exh.5 is hereby allowed.
2. Defendants or anybody on their behalf are hereby restrained to use boundary of Survey No.26/2/2 in any manner till the disposal of suit.
3. Application at Exh.19 is hereby rejected.

Sd/-xxx
(V.V.Kulkarni)

Jt.Civil Judge, Junior Division,
Shirpur.

Place: Shirpur.
Date : 20.10.2015.

CERTIFICATE

I certify that the contents of this P.D.F. file are word to word as per Original order.

Name of the Stenographer	: Jain Jitendra Shashikant
Name of the Court	: Court of Jt.C.J.J.D. and J.M.F.C., Shirpur.
P.D.F. Uploading Date	: 20.10.2015.

Sd/-xxx
(J.S.Jain)
Stenographer (L.G.)

