

(Exh.5)

1

Regular Civil Suit No. 106/2019
CNR NO.: MHKO07001309-2019

MHKO070013092019



Shri. Mahaveer Aadgonda Patil

*- V/s.

Sou. Anuradha Dilip Kamble

ORDER PASSED BELOW EXH. 5

1] Plaintiffs, some of the villagers of Udgaon, Tal. Shirol, Dist. Kolhapur have instituted present suit as representative suit as per order 1 Rule 8 of the Code of Civil Procedure. Defendant No.1 is Police Patil of village Udgaon. Defendant No.2 Tahasildar and Executive Magistrate, Shirol, defendant No.3 Collector, Kolhapur and defendant No.4 all villagers of Udgaon. After issuance of notice, defendant No. 5 to 39 appeared and on their request are joined as party defendants to the suit. This interim application is taken out by plaintiffs under Order 39 Rule 2 r/w. Section 151 of C.P.C. seeking injunction against defendants No. 2 and 3 from restraining plaintiff No.1 from his customary right to take Manachi Vati (मानाची वाटी) in the yearly procession of Jogeshwari @ Jogni of village Udgaon, till decision of suit, on the basis of order dtd. 6/3/2019 bearing No.एमजी/ वशि/८७१/२०१९.

2] Brief facts of application are as under -

Plaintiffs have taken out present suit for declaration that, except the persons who are mentioned in para Nos. 2 and 3 of the plaint, nobody is having customary rights in the procession of Jogeshwari @ Jogani. According to them, those rights are acquired by plaintiff No. 1 to 13 by custom. According to them, plaintiff No.1 being from Patil family having right to take Manachi Vati (मानाची वाटी) in procession. This custom is prevailing since more than 100 years ago. However, defendant No.1, who is an appointed Police Patil by State, without any right claiming right to take Manachi Vati (मानाची वाटी). Therefore, plaintiff No.1's customary right in procession is obstructed by defendant Nos. 1 and defendant Nos. 2 and 3.

3] According to plaintiffs, defendant No. 2 has issued order dtd. 3/6/2019 and given said right to take Manachi Vati (मानाची वाटी) to Talathi of village who is a government official, the said order is illegal act of defendant No. 2. Thus, by way of present suit, plaintiffs are seeking declaration of plaintiff No. 1's customary right to take Manachi Vati (मानाची वाटी) in procession of Jogeshwari and declaration that, the order dtd. 3/6/2019 issued by defendant No.2 interfering plaintiff No. 1's customary right as illegal.

4] According to plaintiffs, the Jogeshwari @ Jogani is renown deity at Udgaon. Since times immemorial it is existing there.

The yearly procession of deity takes place on "वैशाख अमावस्या " "दर्शभावुका अमावस्या" and "जेष्ठ प्रतिपदा" as per Marathi Calendar. The procession starts from midnight of Amavasya. Each village community has to perform their pious function or role during procession which is acquired by each of them as customary right. The mode of ceremonies or part to be performed by each "मानकरी" is given in detail in the application. According to plaintiffs, the most respected and the disputed customary right of taking sword and Manachi Vati (मानाची वाटी) in the hand of Jogeshwari @ Jogani Devi is, with family of plaintiff No.1. When procession starts from temple of Devi, the Patil (मानकरी पाटील)takes the sword and Manachi Vati (मानाची वाटी) from plaintiff No. 1's family. Thereafter, each respected members from the village perform their separate pious duties towards the deity.

5] " वाटी धरण्याचा मान " is customary right of Patil family, plaintiff No.1. Inam lands were granted by the then princely state of Kolhapur to all the persons who perform daily "puja archa" of diety and other reasons. Defendant No.1 is an appointed Police Patil of village Udgaon as per provisions of Maharashtra Village Panchayat Police Ordinance. Prior to her though an appointed as Police Patil was in service of village Udgaon, Manachi Vati (मानाची वाटी) was used to be taken by plaintiff No.1 alone in the procession.

6] According to plaintiffs, defendant No.1 on the basis of fabricated copy of order alleged to be issued by defendant No.2 dtd. 6/5/2004, (wherein it is stated that, the right to take Manachi Vati (मानाची वाटी) is with the Police Patil, of village Udgaon) claimed her right in procession. Therefore, in order to ascertain its truthfulness plaintiff had applied for certified copy of said order dtd. 6/5/2004. Then office of defendant No.2, by their letter dtd. 27/5/2019 informed plaintiffs that, there is no any copy of said order dtd. 6/5/2004 available with their office. According to plaintiffs thus alleged order dtd. 6/5/2004 is false and fabricated. It is without seal of the defendant No.2. By using it, defendant No.1 has claimed her right to take Manchi Vati (मानाची वाटी) and created obstacle, in the procession and right of plaintiff No.1 in said procession, which is in existence and in continuation since long, as a customary right.

7] According to plaintiffs, inspite of conducting inquiry through subordinate Circle Officer and many efforts made by Tahasildar, Shirol, dispute between plaintiff No.1 and defendant No.1 in respect of taking of Manachi Vati (मानाची वाटी) during procession could not be resolved amicably. Therefore, by their letter dtd. 6/3/2019, Tahasildar Shirol (defendant No.2) it is asked to both plaintiff No.1 and defendant No.1 to settle their dispute of taking Manachi Vati (मानाची वाटी) amicably or get it adjudicate from

competent civil court being of civil nature and till then the Talathi of Udgaon is empowered to take Manachi Vati (मानाची वाटी) during the yearly processions.

8] According to plaintiffs, defendant No.1 had never any right to take, Manachi Vati (मानाची वाटी) nor she is having such right as on today. In spite of that on the basis of her complaint, defendant Nos. 2 and 3 are interfering in the religious rights of the plaintiff No.1 on false ground that, due to use of said right by plaintiff No.1, the social peace and harmony will be disturbed and given said right to Talathi of village.. Hence, plaintiffs have taken out present suit for declaration and injunction.

9] According to plaintiffs, defendants or anybody acting on their behalf be restrained from obstructing procession of deity Jogeshwari @ Jogani by obstructing plaintiff No. 1's customary rights to take Manachi Vati (मानाची वाटी), on the basis of order dtd. 3/6/2019 passed by defendant No.2.

10] After issuance of suit summons and notice, defendant Nos. 2 and 3 appeared but, they failed to file their written statement as well say to present application.

11] However defendant Nos. 5 to 39 appeared and on their request were added as defendants as they are having interest in suit claim. They filed their say and Written Statement at Exh.35. The defendant No.1 filed say and Written Statement at Exh.23. According to defendant No. 1, the right to take Manachi Vati (मानाची वाटी) in the procession of Jogeshwari is with the post of Patil and not with plaintiff No.1 because he is born in family of Patil. According to her, she is from the Scheduled Caste (SC). There is procession committee in the village Udgaon. In the procession of last year Smt. Bhandare, the then Police Patil of village Udgaon was entitled to take Manachi Vati (मानाची वाटी) but plaintiff No.1, pressurized her and obstructed to take Manachi Vati (मानाची वाटी) though, she was Police Patil at that time and plaintiff No.1 took Manachi Vati (मानाची वाटी). The dispute with regard to entitlement of taking Manachi Vati (मानाची वाटी), during the procession was raised in the year 2019. Circle Officer, Jaysingpur on the directions of Tahasildar, Shirol conducted inquiry and submitted report dtd. 24/5/2019. According to Tahasildar till decision of dispute with regard to right to take Manachi Vati (मानाची वाटी) by competent court, Gaonkamgar Talathi is empowered to take Manachi Vati (मानाची वाटी) in the procession. The order dtd. 3.6.2019 is issued by Tahasildar, Shirol to that effect.

12] According to defendant No.1, during inquiry by Circle Officer, Udgaon he had recorded statement of one Balkrushna

Shakarrao Jadhav who was working as Police Patil, Udgaon from 1990 to 2010. He had stated before Circle Officer that, during his tenure as Police Patil, he had taken Manachi Vati (मानाची वाटी) in the yearly processions of deity Jogeshwari. According to defendant No.1 by way of office order bearing No. एमजी/ वशि/५११/२००४, Tahasildar, Shirol had empowered Police Patil of village to take such Manachi Vati (मानाची वाटी).

13] According to defendant No.1, plaintiff No.1 himself has opposed for procession of deity Jogeshwari on his demand to take Manchi Vati (मानाची वाटी) by him alone during the procession. She never obstructed procession. Hence, she prayed that, application taken out by plaintiffs be rejected.

14] Defendant Nos. 5 to 39 admitted the claim of plaintiffs. According to them, all the contentions in respect of customary rights of villagers of Udgaon from various communities mentioned in detail by plaintiffs in para No. 2 and 3 of the plaint are true and correct.

15] According to them, plaintiff No.1 is having customary right with their family since many generations, to take sword and Panchdhatuchi Manachi Vati (पंचधातूची मानाची वाटी) during the procession as they are from 'Patil family'. According to these defendants not only plaintiff No.1 but all other villagers from twelve

service provider communities prevailing in village who used to get paid for the service provided with village produce under a complete barter system, commonly known as (बारा बलुतेदार) in Marathi are having their individual customary rights. All of them are performing their those customary rights in continuation for generations together. As per their knowledge, plaintiff No.1 is having the customary right to take Manachi Vati (मानाची वाटी) and not the Police Patil who is appointed as per law. Family of plaintiff No.1 is resident of Udgaon since prior to more than 100 years. They were granted title 'Patil' from Shri. Chatrapati Shahu, the then ruler of Princely State, Kolhapur. Not only this, prior to that also plaintiff No. 1's family/ancestors were taking Manachi Vati (मानाची वाटी) during the procession of Jogeshwari deity.

16] Many of the family members of plaintiff No.1 were also worked as a Police Patil. After formation of State Government, Patil post is being fill up by appointing to the persons from other communities by State Government. Plaintiff No. 1's right to take Manachi Vati (मानाची वाटी) during the procession is a customary right. These defendants are from utmost all the communities of village Udgaon (बारा बलुतेदार). They all too are having their separate customary rights, who are performing such rights since long during the procession. In spite of that, defendant No.1 without any right is creating obstacle to the rights of plaintiffs as well as defendant

Nos. 5 to 39. Therefore, plaintiffs application be allowed and injunction be granted.

17] Heard both sides. Gone through record. Considering rival contentions of both parties, following points arise for my determination which I have recorded my findings thereon along with detail reasons to follow.

Sr.No	Points	Findings
1.	Whether plaintiffs have made out prima facie case in his favour ?	.. In the Negative.
2.	Whether balance of convenience lies in favour of plaintiffs ?	.. In the Negative
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted in their favour ?	.. In the Negative.
4.	What order ?	As per final order.

REASONS

18] In order to establish their contentions both sides relied on documents as well as affidavits of witnesses in support of their claim. Plaintiffs relied on various documents at Exh.3 as well Exh.26. Defendant No.1 at Exh.39.

AS TO POINT NOS. 1 TO 4

19] Present plaintiffs have taken out this application for injunction during pendency of suit. Issues are already framed at Exh.27 on 9/6/2020. Part 6 of Code of Civil Procedure deals with supplementary proceedings which are defined in Section 94, as those proceedings, provided by law, in order to prevent the ends of justice being defeated. The court may grant temporary injunction as per sub section "C" of said Section and on disobedience or breach of such injunction by person against whom it is granted, court can take action as provided in said section.

20] The rules providing requirements and procedure for granting such interim relief of injunction, are provided under Order 39. Said order provides two kinds of reliefs for achieving ends of justice. Sub Section 1(a) deals with relief which is to be granted when any property in dispute is in danger, Sub Rule (b) relates to injunction when any defendant threatens or intends to remove or dispossess the property of plaintiff in order to defraud him. Present plaintiffs are asking relief which is covered in Sub Section 2. According to them, the order of Tahasildar dtd.3/6/2019 is affecting plaintiff No.1's customary right of taking Manachi Vati (मानाची वाटी) during course of procession. Therefore, defendant Nos. 2 and 3 be restrained from acting on the basis of said order till decision of suit.

21] The provisions of Order 39 provides that, plaintiffs who claims such equitable relief in their favour have to establish three ingredients which are referred above, in order to get relief of injunction in their favour. All the three ingredients/points for consideration are interlinked so now let us see, whether plaintiffs have established them as required by law.

22] On the basis of pleadings by the parties and documents on record, it appears that, village Udgaon is having temple of local deity Jogeshwari @ Jogani. The existence of village Udgaon seems to be from ancient times. The deity too is in existence, since prior to existence of princely State of Kolhapur. The customary right of taking Manachi Vati (मानाची वाटी) in procession is alleged to be with the family of plaintiff No.1, according to plaintiffs as well as defendant Nos. 5 to 39.

23] Learned advocate appearing on behalf of plaintiffs have submitted that, plaintiff No. 1 is seeking continuation of his customary right. It is acquired by him as a custom which is followed in their village since ancient time. The Government or State appointed employees like defendant No.1 or others are not entitled for such customary rights. Those are salaried employees of State. Their service is governed by rules framed under, Maharashtra Civil Services Rules. Neither Tahasildar nor executive Magistrate, can

pass any order which empowers government appointed, Police Patil to enjoy said customary right of plaintiff No.1, during the procession of deity. He further submitted that, defendant Nos. 2 and 3 have not raised any objection to plaintiffs reliefs sought in application. Defendant No.5 to 39 have also supported plaintiffs right. Considering all these facts, plaintiff application be allowed and defendants be restrained from obstructing plaintiff No. 1's customary right of taking Manachi Vati (मानाची वाटी) during procession of deity Jogeshwari on the basis of order dtd. 3/6/2019 issued by defendant No.2.

24] In order to establish their claim, plaintiffs have relied the documents. The first document at Exh.3 is office copy of application by plaintiff and other 62 villagers including all the "मानकरी" who also are having their customary rights during the procession. It is addressed to the Tahasildar, Shirol and is dtd. 7/5/2019. It appears that, on the basis of said application, all of them requested to Tahasildar, Shirol to allow plaintiff No.1 to take Manachi Vati (मानाची वाटी), being his customary right, during the procession of Jogeshwari @ Jogani. The plaintiffs further relied on document Sr.No.2 which is office copy of application dtd. 20/5/2019 issued by defendant No.1 to Tahasildar, Shirol. By way of said application, defendant No.1 had claimed her right to take Manachi Vati (मानाची वाटी) during procession of deity Jogeshwari, being incharge Police Patil of village Udgaon.

25] Plaintiffs relied photographs showing the procession at Exh. 3/7. These photographs shows that, plaintiff No.1 is taking said Manachi Vati (मानाची वाटी) during the procession of deity Jogeshwari. But those are only two photographs and doesn't disclose year of procession.

26] The plaintiff No.1 has much disputed letter dtd. 6/5/2004 issued by Tahasildar, Shirol in favour of Shri. Balkrishna Jadhav, the then Police Patil of Udgaon asking him to take Manachi Vati (मानाची वाटी) in procession of year 2004. According to plaintiffs, it is a fabricated document. It was never issued by Tahasildar, Shirol to said Balkrushana Jadhav. According to plaintiffs, when they applied for authentic copy of said letter to Tahasildar, Shirol by filing their application of copy dtd. 21/5/2019, the office of Tahasildar informed plaintiffs by their reply at Sr. No. 3/9 that, letter dtd. 6/5/2004 is not found in their office record. However, it appears that, reference of said letter dtd. 6/5/2004 is taken by Tahasildar in their order dtd. 3/6/2019 in para No. 4 of the said order. Thus, at this stage it can not be said that, order issued by letter dtd. 6/5/2004 was never issued by Tahasildar, Shirol and copy of said letter produced by defendant No. 1 is forged one.

27] Moreover the subsequent order which is challenged in this court is passed by Tahasildar Shirol on 03/06/2019 on the basis of inquiry conducted by Circle Officer. Due to civil nature or dispute

between plaintiff No.1 and defendant No.1, Village Talathi was empowered to take Manachi Vati (मानाची वाटी) in procession till adjudication of said right by civil court or till settlement if any arrived by both the parties in respect of said right. It is passed by Tahasildar, Shirol being Executive Magistrate.

28] Defendant Nos. 5 to 39 stated that, they are witness to procession since long. Witness Raosaheb Sutar on their behalf is aged about 79 years. He states on oath that, he is well acquainted with customs in procession. According to him, plaintiff No.1 is continuously taking, Manachi Vati (मानाची वाटी) since 1990 when he was 16 years old. Prior to him (plaintiff No.1), his deceased father Mahavir Adgond Patil used to take it continuously for many years, prior 1989.

29] According to this witness, though Balkrishna Jadhav was Police Patil since 1990, he never seen that Shri. Jadhav was given right, to take Manachi Vati (मानाची वाटी). Even in 2004 no any dispute had taken place about taking Manachi Vati (मानाची वाटी) as alleged by plaintiffs.

30] The defendant Nos. 5 to 39 stated that Shri. Uttam Maruti Tiwade was police patil of village from 2011 to 2016, but during his tenure plaintiff No.1 was taking Manachi Vati (मानाची वाटी)

during procession of Jogeshwari. Not only this Uttam Maruti Tiwade himself by affidavit dtd. 30/03/2021 stated on oath that, he served as Police Patil of Udgaon for about six years. All the articles of deity as well idols were kept with him for security. But plaintiff No.1, alone had used to take Manachi Vati (मानाची वाटी) in procession. It was never taken by him as being Police Patil of Udgaon.

31] Defendant Nos. 5 to 39 supported contentions of plaintiffs and in support of their contentions filed affidavits of defendant No.5 Mahaveer Devgonda Patil at Exh.44. One Raosaheb Babu Sutar (Exh.45) Babaso Bapu Aambi (Exh.46), Ashok Annu Madiwal (Exh.47), Raju Dhondiram Kamble (Exh.48), Sonabai Laxman Kumbhar (Exh.49), Babaso Chougule (Exh.50). They also submitted affidavit of plaintiff No.1 at Exh.51 and one Uttam Maruti Tiwade dtd. 30/03/2021. All these witnesses have supported the contentions of plaintiffs. According to them, each of them is resident of village Udgaon. According to them, plaintiff No.1 alongwith other plaintiffs and defendant Nos. 5 to 39 are having customary rights during yearly procession of Jogeshwari. According to all these witnesses right to take Manachi Vati (मानाची वाटी) and sword during the procession is customary right of plaintiff No.1, existing since long. Some of witnesses have observed these customs since last 40 to 70 years. All of them reproduced the entire process of procession and part of each and every Mankari (मानकरी) belonging to all sub

castes (बारा बलुतेदार) which are part of Hindu religion. Sum and substance of their contentions is that only because of defendant No.1 and on her instigation, defendant Nos. 2 and 3 have created obstacle in customary right of plaintiff No.1 during the procession hence, plaintiffs application be allowed.

32] According to defendant No.1, she has also claimed right of taking Manachi Vati (मानाची वाटी), during procession. Unless plaintiffs right for taking Manachi Vati (मानाची वाटी) is decided and declared by this court, plaintiff can not seek injunction as prayed by them.

33] Defendant No.1 has relied on affidavit of Ex-Police Patil Balkrushna Jadhav at Exh.37. His age is near about 70 years. He stated on oath that, he is resident of Udgaon. According to him, first police patil of Udgaon was appointed by Princely State of Kolhapur and he was Satgonda Patil. He was succeeded by his son Babasaheb and thereafter Bapuso Satgonda Patil. Said Bapuso was also appointed as a Police Patil by State Government, after his demise, Satgonda Patil was appointed as Police Patil. Thereafter, Jaysingpur Police Patil was incharge of village Udgaon, who used to take Manachi Vati (मानाची वाटी) during the procession. He further stated on oath that, from 1990 to 2010, he was working as Udgaon Police Patil. He was appointed by Government of Maharashtra. He had

taken Manachi Vati (मानाची वाटी) in all yearly processions of deity Jogeshwari @ Jogani during his entire tenure. He further stated on oath that, when there was dispute about such right during his tenure as Police Patil, Tahasildar Shirol had issued order that, Police Patil of Udgaon is having said right. According to him he had used such right on the basis of said order.

34] Defendant No.1 in support of her contention that, plaintiff No.1 is not having such customary right but, it is right of appointed Police Patil of village Udgaon by State Government, relied on affidavit of one witness Raju Siddhu Pujari at Exh.40. Said witness Raju stated on oath that, he is resident of Udgaon since his birth. He is aged about 49 years. According to him, he is acquainted with custom of taking Manachi Vati (मानाची वाटी) during yearly procession of deity Jogeshwari. According to him, such right is with the person who is in charge of the post, 'Police Patil' of village Udgaon and not with plaintiff No.1 because he is from the said family of Patil. According to him, plaintiff No.1 has instituted this false suit only with a grudge that, defendant No.1 is a lady and belonging to Scheduled Caste and therefore, in order to prevent her from using such right in the procession. According to him, plaintiffs themselves have refused to resolve the dispute of taking Manachi Vati (मानाची वाटी) before Tahasildar, Shirol only because they are having such grudge against defendant No.1.

35] In support of her contention, defendant No.1 filed one application at Exh.41 and prayed that, relief of plaintiffs for injunction may not be granted and further stating that, the right to take Manachi Vati (मानाची वाटी) in the procession is with incharge Police Patil of village Udgaon and not with plaintiff No.1 as his customary right claimed by him. The said application bears signatures of more than 150 villagers of village Udgaon. It is the contention of all the applicants that, the procession for the year 2019 could not take place only because of the whims of plaintiff No. 1, who refused to allow defendant No.1 to take said Manachi Vati (मानाची वाटी) during the said procession.

36] It appears that, as both plaintiff No.1 and defendant No.1 were claiming same right, Tahasildar Shirol had directed to conduct inquiry in order to ascertain who is entitled for said customary right to take Manachi Vati (मानाची वाटी). The copy of said report which is conducted by Circle Officer, Jaysingpur dtd. 24/5/2019 is at Exh.3/3. On perusal of said report it appears that, the report is exhaustive. As per report, he has recored the statements of villagers. All the persons who are using their customary rights during the procession, from different class and communities of village Udgaon, (बारा बलुतेदार), who are Mankari (having customary right) during the said procession. He also recorded statement of defendant No.1 and Ex-Police Patil Balkrushna Jadhav. After inquiry, he observed that,

right to take Manachi Vati (मानाची वाटी) is with plaintiff No. 1's family being Patil family. But he also stated that, Balkrushan Jadhav who worked as Police Patil was belonging from different family than plaintiff No.1, had also exercised said right, during the procession of deity in his service period. He also stated that right prior to that it was with plaintiff No. 1's family.

37] The document at Sr. No. 3/ 4 is the copy of order dtd. 3/6/2019 issued by Executive Magistrate and Tahasildar, Shirol in favour of P.S.I. Jaysingpur, with reference to dispute of taking Manachi Vati (मानाची वाटी) in procession of deity Jogeshwari, Udgaon. Considering internal correspondence report of police authorities from Sr. No. 1 to 3 as well applications claiming such right by plaintiff No. 1 and defendant No. 1 as well letter from villagers of Udgaon and lastly letter by procession committee Udgaon, it is passed by them the said order clearly shows that, plaintiff No.1 and defendant No.1 are claiming their right to take Manachi Vati (मानाची वाटी). The order is passed by Tahasildar, Shirol. Considering all factors, in order to maintain law and order in their jurisdiction. It was passed so that the communal harmony, between two sects of society in Udgaon should not be disturbed and the common villagers should not suffer. It is passed so that inconvenience, should not be caused to devotees of Jogeshwari idol. It was necessary on part of Executive Magistrate to interfere in this religious matter because of all above reasons, till

both parties get adjudicate who is entitle for right to take Manachi Vati (मानाची वाटी) from Civil Court.

38] It appears that, prior to passing such order, Tahasildar Shirol/Executive Magistrate had asked both parties to settle their dispute amicably and put up such terms of settlement in writing before P.S.I. Jaysingpur. Or they were asked to get their right adjudicated from competent Civil Court. And till adjudication of such, right by plaintiff No.1 and defendant No.2, Tahasildar Shirol has empowered 'village Talathi' to take Manachi Vati' (मानाची वाटी) in procession.

39] According to plaintiffs, plaintiff No.1 is having customary right to take, Manachi Vati (मानाची वाटी) however, defendant Nos. 2 and 3 by passing said order dtd. 3.6.2019 has created obstacle in the plaintiff No. 1's customary right. Therefore, injunction be granted in favour of plaintiffs. In support of their contentions plaintiff has relied on following citations.

(i) **S.K. Wodeyar V/s. Ganapati Madhuling Dixit reported in A.I.R. 1935, 371** wherein Division Bench of our Parent High Court held that, before court of law give effect to a custom, the court must be satisfied that it is definite, ancient, uniform and not illegal in itself or unreasonable. It further held that, custom can be taken as proved even in absence of instances if there is sufficient evidence to show that particular custom has been well known in particular

district. It was further held that in India religious institutions may be endowed by person of one caste to another caste. There can be valid custom against members of community or family to which founder belongs such custom is not unreasonable.

(ii) **Prabhawati Devi and others V/s. Mahendra Narain Singh and others reported in AIR 1981 Patna 133**, wherein Hon'ble Patna High Court, elaborate the distinction between (customary rights) 'Easement' and customary easement. While interpreting Section 2(b), 4, 18 of Easement Act, 1882, it was held that, a customary right is not easement. An easement belongs to a determinate person or persons in respect of his or their land. A fluctuating body like the inhabitants of the locality cannot claim an easement. Easement are private rights belonging to a particular persons while customary rights are public rights annexed to the place in general. Customary right is also different from customary easement and Easements Act does not at all deal with it. It expressly excludes it from its scope and purview.

(iii) **Raja Rajendra Narain V/s. Kumar Gangananda Singh and others reported in 1925 Privy Council 213**

wherein Hon'ble Privy Council has held that, hearsay evidence can be allowed as exception to general rule in place of direct evidence, if existence of custom for some year has been proved by direct evidence.

iv) **Raj Nandan Singh and another V/s. Ram Kishan Lohar and others reported in AIR 1958 Patna 571**, wherein Hon'ble Patna High Court has held that, a customary right exists, independent of any dominant heritage and is vested in a defined class or community of a particular locality, as distinguished from individuals for their sole benefit.

v) **Nani Gopal Sarkar and others V/s. Sitanath Sarkar and others reported in A.I.R. 1966(Cal) 502**, wherein Hon'ble Calcutta High Court has held that, there cannot be direct and positive evidence in many cases for the whole period of the immemorial enjoyment of the right claimed. It is not also necessary that custom should be traced back for the whole time necessary to make it immemorial. Custom no doubt derives its force from the fact that it has a long usage but it is not the essence of the rule that its antiquity must in every case be carried back to a period beyond the memory of men. It would depend upon the circumstances of each case and the antiquity must establish before the custom can be accepted. No definite rule should be laid down as to the length of user of enjoyment which must be proved before local custom may justifiably be inferred.

40] I have carefully gone to all above citations, in my opinion none of them will come to aid of plaintiff No.1 at this stage. The ratio's in all above cases can be considered during the time of final

adjudication of suit while appreciating evidence of parties. The ratio in all of them shows that, while deciding customary right during the trial, what are requirements to be proved by parties and needed to be considered by court. In present case plaintiff No. 1's alleged right is disputed by defendant No.1. By way of present application, plaintiff No.1 want permission to take part in possession and enjoy his alleged customary right during forthcoming procession of deity Jogeshwari. However, there is strong objection of defendant No.1 and other parties, to such right alleged by plaintiff No.1. Tahasildar has already made alternate arrangement for taking, Manchi Vati (मानाची वाटी) during procession, considering the situation of law and order in the village. The said order is made after proper inquiry, giving opportunity of hearing to both plaintiff Nos. 1 and 2 as well as giving time for settlement to them. Thus, prima facie it can not be said to be arbitrary. Hence, in my opinion plaintiffs have failed to establish prima facie that said temporary order passed by Tahasildar is illegal or arbitrary. Hence it would not be just and proper to interfere in the order of Tahasildar dtd. 03/06/2019 till decision of suit.

41] In my opinion, at this stage it would not be just and proper to take Manachi Vati (मानाची वाटी), either by plaintiff No. 1 or by defendant No.2 (or incharge Police Patil) of village Udgaon till decision of suit. The alternate arrangement made by Tahasildar/Executive Magistrate is just and safe in order to avoid

further complications as well multiplicity of the proceedings during the trial.

42] Thus, plaintiffs have failed to establish their prima facie case. If injunction will not be granted in favour of plaintiffs, no any harm or loss going to be caused to them because there is no any objection by defendants for continuation of procession by other "Mankari" and villagers as per order of Tahasildar dtd. 3/6/2019 till decision of suit. On the contrary, if injunction will be granted there is likelihood of disturbance of public peace in village Udgaon due to the dispute between plaintiff No.1 and defendant No.1, which ultimately will affect the peace and harmony during the procession in the village. The devotees as well villagers will suffer for no any reason on their part due to dispute of plaintiff No.1 and defendant No.1.

43] Thus, I answer to point No. 1 to 3 in the negative and in order to answer point No.4, I proceed to pass following order.

ORDER

- (1) Application Exh.5 stands rejected.
- (2) No order as to costs.

Date : 19/04/2022.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.