

Reg. Civil Suit No. 196/2017**Order below Exh. 5**

1] The plaintiff has filed this application seeking temporary injunction to restrain the defendant from creating any way through suit property and obstructing his possession over the same.

2] It is the case of the plaintiff that the suit property was owned by defendant, his brother Yashwant and others. There is a well in the middle of the suit property. After making arrangement for access to the said well, the suit property was partitioned in such a manner that everyone's share will abut the said access. This oral partition took place 40 years ago. The plaintiff is owner of the adjoining properties gat no. 2506 and 2510. As defendant's brother Yashwant was in need of money to pay debt of Vivekanand Patsanstha, he sold 41R land in the south-east corner of the suit property to plaintiff by a registered sale deed dated 12/09/2007. Since then the plaintiff has been in possession thereof and the defendant has no any concern with the same. According to the plaintiff, the common access to the well and defendant's share extends up to the northern way. The defendant has been using the common access and also the road on the north i.e. Bhadole-Vadgaon road. Under these circumstances, the defendant illegally built a shed on the common boundary. He had plans to start a gambling den, an illicit liquor joint and flesh trade in the said shed. However, plaintiff objected to the same. As a result of which the defendant has been making various applications to trouble him. As a part of which he had applied in the year 2013 to the Tahasildar asking for a road as per section 143(2) of the Maharashtra Land Revenue Code. The same was disposed off as

the defendant was having roads to the west and north of the suit property. Also it was rejected because the road mentioned by defendant was not in existence at all. The defendant has also applied under section 5(2) of Mamalatdar's Court Act for removal of obstruction on the road. In the panchnama prepared in that proceeding it was evident that the defendant has two roads one on the west and the other on the north to access his property. However, the Mamalatdar has illegally allowed application no. 70/2017 on 03/11/2017 and has directed removal of obstruction in respect of the road which never existed. The defendant has continued with his illegal activities and has told the plaintiff that he is going to create a new way through the plaintiff's property and would kill the plaintiff if he obstructed him. According to the plaintiff, defendant has link up with politicians. Hence, he is afraid that the defendant will execute his threat and will create illegal access through the suit property. Hence, the application.

3] The defendant has filed his say at Exh. 11. According to him, there is an age old way through the suit property owned by plaintiff and Yashwant and he has been using it since ages. However, the plaintiff and Yashwant have illegally obstructed the said road. The plaintiff has suppressed the said fact. The defendant is an ignorant poor man. On the contrary, the plaintiff is rich and is a political heavy weight. Half common portion of Gat no. 80 was purchased by the defendant's father and another half was purchased by one Maruti Narsu Katkar. However, as common enjoyment of the said property was causing great hardship, they orally partitioned gat no. 80 between themselves. Also in the year 1968 the defendant's father partitioned his share between defendant and Yashwant and accordingly mutation entry no. 3129

was carried out. The well, open space near it and access to it were kept common among all shareholders. The well has very less water. According to the defendant, Yashwant was never in possession of 41R land. Defendant was not a party to its sale deed in favour of the plaintiff. The said sale deed is in violation of the consolidation scheme. Yashwant is in possession of his share. However, plaintiff would occasionally come there. The defendant was not aware of the plaintiff having purchased it. He has come to know about it recently when dispute of road accrued. There is no road available to the defendant as stated by the plaintiff. As the strip in defendant's share was of inferior quality, their father granted an access to the defendant through the share of Yashwant and plaintiff at the time of partition. The defendant has carried out improvement therein. He is also claiming right of easement by necessity in the alternative. The defendant admits making an application to the Tahasildar in May, 2015. According to him, he had filed the said application on the basis of wrong advice received by him. Hence, he did not proceed with the said application. Thereafter he applied under the Mamalatdar's Court Act by application no. 70/2017. The same was allowed on 03/11/2017. The plaintiff has make grave allegations against the Mamalatdar. Hence, according to the defendant, he is a necessary party to the suit. The defendant owns four stripes in the suit property. However, the plaintiff has not disclosed the said fact. The sale deed of plaintiff is false and bogus because Yashwant never owned 41R land. All that he owned was 36.9R. Hence, he prayed to reject the application.

4] From the above contentions the following points arise for my determination and I have recorded my findings thereon along

with reasons below.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff has a prima facie case ?	No
2	Whether the balance of convenience is in favour of the plaintiff ?	No
3	Whether irreparable loss would be caused to the plaintiff, if injunction is not granted in his favour ?	No
4	What order ?	As per final order

REASONS

As to point No. 1 to 4 :

5] According to the plaintiff, the suit property was owned by defendant, his brother Yashwant and others. There is a well in the middle of the suit property. After making arrangement for access to the said well, the suit property was partitioned in such a manner that everyone's share will abut the said access. This oral partition took place 40 years ago. The plaintiff is owner of the adjoining properties gat no. 2506 and 2510. As defendant's brother Yashwant was in need of money to pay debt of Vivekanand Patsanstha, he sold 41R land in the south-east corner of the suit property to plaintiff by a registered sale deed dated 12/09/2007. Since then the plaintiff has been in possession thereof and the defendant has no any concern with the same. According to the plaintiff, the common access to the well and defendant's share extends up to the northern way. The defendant has been using the common access and also the road on the north i.e. Bhadole-Vadgaon road. Under these circumstances, the defendant illegally

built a shed on the common boundary. He had plans to start a gambling den, an illicit liquor joint and flesh trade in the said shed. However, plaintiff objected to the same. As a result of which the defendant has been making various applications to trouble him. As a part of which he had applied in the year 2013 to the Tahasildar asking for a road as per section 143(2) of the Maharashtra Land Revenue Code. The same was disposed off as the defendant was having roads to the west and north of the suit property. Also it was rejected because the road mentioned by defendant was not in existence at all. The defendant has also applied under section 5(2) of Mamalatdar's Court Act for removal of obstruction on the road. In the panchnama prepared in that proceeding it was evident that the defendant has two roads one on the west and the other on the north to access his property. However, the Mamalatdar has illegally allowed application no. 70/2017 on 03/11/2017 and has directed removal of obstruction in respect of the road which never existed. The defendant has continued with his illegal activities and has told the plaintiff that he is going to create a new way through the plaintiff's property and would kill the plaintiff if he obstructed him. According to the plaintiff, defendant has link up with politicians. Hence, he is afraid that the defendant will execute his threat and will create illegal access through the suit property.

6] According to the defendant, there is an age old way through the suit property owned by plaintiff and Yashwant and he has been using it since ages. However, the plaintiff and Yashwant have illegally obstructed the said road. The plaintiff has suppressed the said fact. The defendant is an ignorant poor man. On the contrary, the plaintiff is rich and is a political heavy

weight. Half common portion of Gat no. 80 was purchased by the defendant's father and another half was purchased by one Maruti Narsu Katkar. However, as common enjoyment of the said property was causing great hardship, they orally partitioned gat no. 80 between themselves. Also in the year 1968 the defendant's father partitioned his share between defendant and Yashwant and accordingly mutation entry no. 3129 was carried out. The well, open space near it and access to it were kept common among all shareholders. The well has very less water. According to the defendant, Yashwant was never in possession of 41R land. Defendant was not a party to its sale deed in favour of the plaintiff. The said sale deed is in violation of the consolidation scheme. Yashwant is in possession of his share. However, plaintiff would occasionally come there. The defendant was not aware of the plaintiff having purchased it. He has come to know about it recently when dispute of road accrued. There is no road available to the defendant as stated by the plaintiff. As the strip in defendant's share was of inferior quality, their father granted an access to the defendant through the share of Yashwant and plaintiff at the time of partition. The defendant has carried out improvement therein. He is also claiming right of easement by necessity in the alternative. The defendant admits making an application to the Tahasildar in May, 2015. According to him, he had filed the said application on the basis of wrong advice received by him. Hence, he did not proceed with the said application. Thereafter he applied under the Mamalatdar's Court Act by application no. 70/2017. The same was allowed on 03/11/2017. The plaintiff has make grave allegations against the Mamalatdar. Hence, according to the defendant, he is a necessary party to the suit. The defendant owns four stripes in the suit

property. However, the plaintiff has not disclosed the said fact. The sale deed of plaintiff is false and bogus because Yashwant never owned 41R land. All that he owned was 36.9R.

7] As per section 23 of the Mamalatdars' Court Act, there is no appeal from any order passed by Mamalatdar. However, revisional powers are vested with the Collector. Mamalatdars' Court Act does not confer any revisional or appellate powers on the civil court. It was argued on behalf of the plaintiff that he has filed suit under section 36, 37 and 39 of the Specific Relief Act seeking declaration that the said decision of Mamalatdar is illegal.

8] Admittedly, the plaintiff has not filed any revision application with the Collector. Before granting a temporary injunction the Court must be satisfied that the plaintiff has a prima facie case; that the Court's interference is necessary to protect him from irreparable or at least serious injury; that the balance of convenience is in favour of the person who asks for the injunction and that there is no other sufficient or adequate remedy open to him by which to protect himself.

9] Now the Mamalatdars' Court Act itself provides a remedy to the plaintiff in the form of revision application to the Collector. However, the plaintiff for reasons best known to him has decided not to use the said remedy. The Mamalatdars' Court Act is a code in itself which lays procedural as well as substantive law. The defendant has an order in his favour which has been passed by the Mamalatdar in exercise of his lawful powers under section 5 of the aforesaid Act. Under these circumstances, if any order is passed by this court, it will be beyond the purview of the

aforesaid Act. Also particularly when the plaintiff has not availed the remedy available in the Act, allowing the application will cause great injustice to the defendant.

10] For the aforesaid reasons, I hold that the plaintiff has no prima facie case. The balance of convenience is not in his favour and no irreparable loss will be caused to him, if the application is rejected.

In the result, I pass the following order.

ORDER

- 1] Application at Exh. 5 is rejected.
- 2] Parties to bear their own costs.

Sd/-
(Mahesh Sowani)
Jt. Civil Judge, Jr. Dn.,
Peth Vadgaon

Date : 06/04/2018

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Mrs. Rupali Sanjay Jadhav
Name of Court	Shri. M. R. Sowani, Jt. C.J.J.D. and J.M.F.C., Peth Vadgaon
Date of Dictation	06/04/18
Judgment/Order signed by the P.O. on	06/04/18
Judgment/Order uploaded on	07/04/18