


MHKO110018902025 	<p style="text-align: center;"><u>ORDER BELOW Exh. 5 in</u> <u>R.C.S. NO. 218/2025</u></p> <p style="text-align: center;"><u>Sadashiv Ramchandra Bhosale</u></p> <p style="text-align: center;"><u>Vs.</u></p> <p style="text-align: center;"><u>Subhash Pandurang Patil and Ors.</u></p>
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The plaintiff has made the application for temporary injunction under Order 39, Rules 1 and 2 r/w section 151 of the Code of Civil Procedure, 1908 (*in short referred to as C.P.C.*) to prevent the defendants or any other person claiming under them from constructing and restraining them from disturbing the plaintiffs' peaceful possession over the suit property, described in para no. 1 of the plaint.

02. The plaintiff's case in brief is as follows :-

The present suit is filed for perpetual injunction against the defendants. The plaintiff had purchased the suit property mentioned in Para No. 1 of the plaint from the defendant no.1 vide registered Sale Deed bearing Registration No. 164/1999 on 11.01.1999. Since then, the plaintiff is in ownership and possession of it. Thereafter, in the year 2001 the plaintiff has constructed RCC building admeasuring area of 50.17 sq.meter on the suit property. It is registered with the Gram Panchayat Nave Pargaon bearing Property Card No. 1272 at Sr. No. 1424.

03. The plaintiff has submitted that, the road situated on the northern side of the suit property is the Borpadale-Vathar road.

The suit property was sold to the plaintiff by the defendant no. 01 after the State Highway Authority has acquiesced some portion of land between the northern side of the suit property and the Borpadale-Vathar road for building Highway. As per the Sale Deed dated 11.01.1999 the plaintiff was granted easmentary right of access from the northern side of the suit property to the Borpadale-Vathar Road by the defendant no.01. He does not have any alternate road of access to and from his property to the Borpadle-Vathar road other than easmentary right of access granted to the plaintiff by the defendant no. 01 as per the Sale Deed dated 11/01/1999.

04. The plaintiff has further submitted that, on 01/10/2025 at about 6.00 p.m the defendants and four other persons unloaded the truck full of bricks upon the suit property. The plaintiff upon inquiring with the defendants that why was the truck being unloaded upon the suit property he was threatened by the defendants. The defendants are trying to carry out construction on the suit property and are trying to disturb the plaintiff's possession over the suit property. Therefore, the plaintiff has filed the suit and present application against the defendants for temporary injunction.

05. The defendant no. 1 to 4 have filed their say at Exh.18 and have strongly resisted the application. He has denied the contents of the plaint and has stated that, the present suit is false, illegal and not tenable in the eyes of law. The suit is barred under Order 7 Rule 3 of C.P.C. The plaintiff is in possession of 3 Are of land and has carried out construction in the entire suit property. He

further contended that, some portion of land is vacant on the southern side of the house. The construction carried out by the plaintiff on the suit property is illegal. The name of the plaintiff is not mutated to the 7/12 extract of the suit property. The Sale deed is ambiguous as the name of the village mentioned in it is Mauje. Toap and that the suit property is situated in Mauje. Nave Pargaon.

06. The defendants have contended that, as per the Sale Deed dated 11.01.1999, the defendants on the northern side of the house and the shops i.e constructed on the suit property of the plaintiff have already provided an internal road to him. It is quiet evident from the Google map and other photos filed on record. The Sale deed executed in favour of the plaintiff does not state that the road on the northern side of the suit property is the Borpadale-Vathar Government Road. The plaintiff is trying to make misleading pleadings in the plaint by stating that the road mentioned in the Sale Deed is the Borpadale- Vathar road. The plaintiff has not produced on record any document to show that he is not in possession of an area admeasuring 00 H 03 R of suit property as mentioned in the Sale Deed bearing registration no. 164/1999 dated 11/01/1999.

07. The defendants have further contended that, the property mentioned in the Sale Deed is not purchased in two installments by the plaintiff in order to claim that the property adjacent and situated on the northern side of the internal road of the suit property belongs to him. The defendants were already in possession of tin sheds erected on the property belonging to them on the northern side of the internal road situated on the northern

side of the suit property. They are in the place of the tin sheds carrying out construction upon it. The defendant no. 04 at the cost of his own expenditure in the month of May 2025 for the flow of drainage water had laid cement pipes on the northern side of their property. They have also cleaned the space and have purchased bricks for construction incurring a huge expenditure of Rs. 1,00,000/-. The suit is barred by non-joinder of necessary parties and by suppression of material facts. Hence, they prayed to reject the application with cost.

08. After having considered the arguments advanced by both the sides and on perusal of the pleading and the documents filed on record by both the parties, the following points arise for my determination. Findings thereon are recorded for the reasons discussed herein under :-

SR. NO.	POINTS	FINDINGS
1.	Whether there is a prima-facie case in favour of plaintiff?	No
2.	Whether balance of convenience tilts in favour of plaintiff?	No
3.	Whether irreparable loss will be caused to plaintiff, if relief sought is not granted?	No
4.	What order ?	Application is rejected.

REASONS

As To Point Nos. 01 to 03:-

09. All the points are inter connected with each other. Hence, they are discussed together to avoid repetition of facts and law. The three cardinal principles to be assessed while deciding the application are prima facie case, balance of convenience and irreparable loss.

10. Heard learned Advocate Shri U. N. Mangave for the plaintiff and Advocate Shri. R. D. Jugale for the defendants. The plaintiff had also filed written notes of argument below Exh. 23. Both of them have argued in line with their respective pleadings. The plaintiff has filed affidavits in support of his contentions.

11. The Ld. Advocate for the plaintiff Shri. U.N.Mangave has reiterated the contents of the plaint in his written argument as well as in his reply. He argued that, the plaintiff has purchased the suit property from the defendant vide registered sale deed bearing registration no. 164/1999 on 11/01/1999. As per the Sale Deed (Sr. No. 1 and 02 at Exh. 03) he is the owner of the suit property and has carried out RCC construction upon it. The plaintiff as per the Sale Deed is entitled to easmentary right of access to the road from his suit property.

12. The Advocate for the Plaintiff further argued that, the road mentioned in the Sale Deed is the Borpadale- Vathar road as per the Maharashtra Highway Act, 1955, National Highways Act,

1956, Motor Vehicles Act, 1988 and National Highways Authority of India Act, 1988. The 10 feet internal road as claimed by the defendant is not registered with the Government authorities. Therefore, it cannot be taken into consideration. The plaintiff is entitled to the easmentary right of access from the date of purchase of the suit property and is in use of it for the past 25 to 26 years.

13. The Advocate for the plaintiff argued that, he does not have any alternate road of access to and from his suit property to the Borpadle- Vathar road. As per the Sale Deed dated 11/01/1999 the plaintiff is entitled to the easmentary right of access. If the defendants are allowed to carry out construction on the northern side of his property then the plaintiff's way will be obstructed. The defendants property situated on the southern side of the Borpadle-Vathar road is reserved by the Highway Authority till the electric pole shown in the photographs for road widening purpose. The easmentary right needs to be protected and if it is not, then irreparable loss will be caused to him. Hence, he prayed to allow the application.

14. The Ld. Advocate for the defendant Shri. R. D. Jugale has reiterated the contents of his written statement in his argument. He argued that the plaintiff is suppressing material facts and has not come with clean hands before the court. The Borpadle-Vathar road mentioned as situated on the northern side of the suit property in the description of the plaint is not mentioned in the Sale Deed bearing registration no. 164/1999 dated 11.01.1999. The property situated between the Borpadle-Vathar road and the northern side of the suit property is admeasuring 00 H 03 R in

area. The defendant is not liable to waste his extra 00 H 03 R of land for the convenience of the plaintiff under the garb of easmentary right.

15. The Advocate for the defendant further argued that, the suit of the plaintiff is based upon the Sale Deed dated 11.01.1999 and easmentary right granted by it. However, there is no pleading in support of the easmentary right. The photographs filed on record show that there is a road situated on the northern side of the suit property and that it is about 10 feet in width. Also, the plaintiff in his written argument at Exh 23 has admitted that there is a road but it is not registered with any Government authority. The suit property of the plaintiff is not in a land lock position in order to enable him to claim easmentary right of access by way of Dominant heritage.

16. He further argued that the Highway Authorities have yet not acquired the defendants property for road widening purpose. Unless and until it is acquired the defendant is the owner of it. There were tin sheds existing upon the suit property and after demolishing them the plaintiff is carrying out RCC Construction in place of it. In order to claim easmentary right through the defendants property the plaintiff needs to show that right of easement exists in his favour. The defendants have already laid down a drainage line in the month of May 2025 and have purchased bricks for carrying out construction. They have incurred an expenditure of Rs. 1,00,000/- and will suffer irreparable loss if the construction is stopped. Hence, he prayed to reject the

application with compensatory costs.

17. The Plaintiff has filed documents below List at Exh. 03, 07, 10, 20 and 26. Whereas, the defendant has filed documents below List at Exh. 17 and 25. The plaintiff has filed affidavit of Bhujing Nivrutti Bhandavle (Exh. 21) and Dhondiram Shiv Bhalavne (Exh. 22).

18. The present suit is filed for permanent injunction against the defendants. At this interim stage, it is necessary to see whether the defendants and any other person claiming through them are trying to disturb the peaceful possession of the plaintiff over the suit property and whether the defendants are trying to carry out construction over it. Also, whether the construction activity being carried out by the defendant is affecting the easmentary right of access of the plaintiff.

19. The defendants state that the Sale Deed is ambiguous due to mention of the village name as Mauje Toap instead of Mauje Nave Pargaon. However, he does not deny the execution of the Sale Deed in respect of an area admeasuring 00H 3R in Gat no. 556/B/2. Hence, it is an admitted fact by both the plaintiff and the defendants that, the plaintiff is the owner and possessor of an area admeasuring 00H03R vide sale deed bearing registration no. 164/1999 executed on 11/01/1999 by the defendant no. 01 in favor of the plaintiff.

20. The plaintiff is claiming that the road on the northern side of the suit property is the Borpadale-Vathar road. As per the Sale Deed dated 11/01/1999, he is having easmentary right of

access through the defendants property situated adjacent to the Borpadale-Vathar Road. Whereas, the defendants alleged that the road on the northern side of the suit property as per the Sale Deed is the internal 10 feet road provided to the plaintiff and that it is already in use by the plaintiff. Hence, the crux of the dispute at this stage is whether the road mentioned in Sale Deed is the Borpadale-Vathar road and that the plaintiff has the easmentary right of access through the defendants property which is immediately adjacent to and on the southern side of it.

21. The plaintiff in his plaint admits that as per the Sale Deed he is the owner and possessor of an area admeasuring 00H03R in Gat No. 55/b/2. The defendant in his written statement at Exh. 18 has admitted that the defendant as per the Sale Deed is in possession of an area admeasuring 00 H 03 R and has constructed a house and two shops on it. The defendants have further alleged that, the plaintiff has utilized the entire area mentioned in the Sale Deed and has some vacant area on the southern side of the suit property. On perusal of the village extract 8A (Sr. No. 02 at Exh. 3), photograph (Sr. No. 3 at Exh. 3 and Sr. 1,2,4 and 6 at Exh.25) and as per the pleadings in the plaint it appears that the plaintiff has a RCC construction comprising of a house and two shops admeasuring 50.17 Sq. Mtr in area, bearing property card no. 1272, at serial no. 1424.

22. The photograph (Sr. No.01 at Exh. 25) shows that there is vacant land comprising of trees belonging to the plaintiff on the southern side of the suit property. The Plaintiff in his plaint has admitted that the defendant had measured the suit property and

handed over its possession to him. The plaintiff alleges that the defendants are trying to disturb his peaceful possession over it, however, in support of his contention has not filed any documentary evidence on record. Hence, prima facie it appears that the plaintiff is in peaceful possession of an area admeasuring 00 H 03 R as per the Sale Deed dated 11/01/1999 bearing registration no. 164/1999. It appears that, the plaintiff is trying to blow hot and cold at the same time by stating that the defendant is trying to disturb his possession when from the documents and the pleadings it appears that the defendant is not trying to do anything of that sort.

23. The plaintiff alleges that as per the Sale Deed dated 11/01/1999, he has an easmentary right of access from the northern side of his suit property to the Borpadle- Vathar road through the defendants property. He does not have an alternate road of access from his suit property. The 'Road' mentioned in the Sale Deed is the 'Borpadle- Vathar Government Road' as pleaded by him in the para no. 1 of the plaint. The defendants on the other hand allege that the plaintiff as per the Sale Deed is already provided with an alternate 10 feet road adjacent to and in between the northern side of the plaintiff's suit property and the defendants property. On perusal of the photographs (Sr. No. 1,2,4 and 5 at Exh. 17, Sr. No. 2,3, 4 and 5 at Exh. 25)it prima facie appears that there is a unpaved road (कच्चा रस्ता) approximately 8 to 10 feet in width situated on the northern side of the suit property and the southern side of the defendants property, parallel to the Borpadle-Vathar road extending right upto an intersection from where it

leads to an entry exit point on the Borpadle-Vathar road.

24. Even the google map photograph (Sr. No.07 at Exh. 17) and photograph (Sr. No. 2,5 at Exh 25) shows that the plaintiff is having a way of entrance and exit in the form of unpaved road (कच्चा रस्ता) to the Borpadle-Vathar road from the eastern side of the defendants property. Further, the photographs (Sr. No. 2 at Exh. 17 and Sr. No.3, 4 at Exh 25) shows that on the western side of the plaintiff's property and adjacent to the defendants and other residents landed properties there is a trail (पायवाट) right up to and passing adjacent to the plaintiff's property. Therefore, the pleading and the argument of the plaintiff that he does not have access to his property does not hold water at this stage.

25. The plaintiff in his written notes of argument at Exh.23 has admitted that there is a unpaved road (कच्चा रस्ता). It is not registered with the Government Authority and therefore, it cannot be considered at this stage. As discussed above, on perusal of the photographs and as per the admission made in the written notes of argument there is a internal road adjacent to and on the northern side of the plaintiff's property. The internal road whether it is registered or not is not in issue at this stage and can be considered at the stage of trial after both the parties have led evidence in consonance with their pleadings in respect of it.

26. The plaintiff is claiming easmentary right of access based upon the Sale deed dated 11.01.1999 executed by the defendant no. 01 in his favour. However, on perusal of the entire plaint it prima facie appears that other than the mention of

easmentary right in the description part of the suit property mentioned in paragraph no .01 of the plaint there is no pleading in respect of the easmentary right being violated by the defendants in the entire plaint. The plaintiff in paragraph no. 06 of the plaint has stated that the defendants have unloaded bricks in upon his property (माझ्या मिळकतीमध्ये का चिरा उलतरलाय). An easmentary right does not grant ownership over someone else's property. It is a legal right created in order to allow a person to use another person's property for a specific purpose. Hence, the plaintiff at this stage cannot claim ownership over the defendants property.

27. As per the pleadings and the arguments advanced by both the Advocates it seen that the landed property situated on the northern side of the suit property and the Borpadale- Vathar road is owned by the defendants. The plaintiff is claiming that he has access to his property only through this piece of land. However, on perusal of the photographs filed by both the plaintiff and the defendant it appears that there is not even a slightest trail (पायवाट) used by the plaintiff, passing from the Borpadle-Vathar road through the defendants property to the suit property in order to enable the plaintiff to claim the easmentary right of access at this stage. Per contra, there appear to be tin shed shops (टपरी) standing on them with one of them being demolished and the foundation (कोबा) being seen. Hence, prima facie it appears that the defendants are in possession and use of their property. Whether, the plaintiff is entitled to the easmentary right of access or not from the defendants property which the plaintiff claims to be his is to be decided at the time of trial after evidence is led in respect of it.

28. The plaintiff claim that the defendants property situated between the suit property and the Borpadle-Vathar road upto to the electric pole as seen in the photograph(Sr. No. 3 and 4 at Exh. 03 and Sr No. 03 and 04 at Exh. 17) is the land between the highway boundary and building line, the defendants have not obtained permission from the concerned Highway authorities for carrying out construction. The plaintiff has relied upon the section 9 of the Maharashtra Highway Act and Maharashtra Govt. GR Page line of power to fix boundary, building and control line of Highways(Sr. No. 2 and 3 at Exh. 26). Even if for the sake of argument at this stage it is considered that the defendant is carrying out construction illegally without the permission of the Highway Authorities then it should not harm the plaintiff in any way because acquisition of land is not the subject matter in the present suit. Therefore, it is not an issue to be decided in the present suit by this court. Also, if anyone who needs to be aggrieved by the construction being carried by the defendants in the area reserved for road widening purpose is the Highway Authorities and it appears that, they have not approached the court. The jurisdiction of the Civil Court is barred by the Maharashtra Highway Act in respect of the Acquisition of land.

29. Moreover, the plaintiff has alleged that the defendant has threatened him with dire consequences. However, in support of his contention he has not filed any proof on record.

30. The question of non-joinder of necessary parties, suppression of material facts and as discussed above whether the plaintiff is having easmentary right as per the Sale Deed dated

11.01.1999 is a matter of trial to be decided after the adjudication of the matter on merits.

31. At this stage, prima facie nothing on record has surfaced which would reveal that the defendants or any person claiming through them are trying to disturb the possession of the plaintiff over the suit property and the construction over it and easmentary right attached to it. Also, the record prima facie does not reveal that there is any immediate loss or danger to plaintiff's property or his alleged easmentary right which would entitle him for reliefs claimed in this application.

32. Thus, the plaintiff has failed to establish his *prima facie* case for the reliefs claimed in this application. Therefore, balance of convenience does not lie in the favour of plaintiff and he will not suffer any irreparable loss if the temporary injunction, as prayed will not be granted against defendants. Per Contra, the defendants have already purchased bricks for the RCC construction in place of the tin sheds. The defendants as seen from the photographs have also laid down drainage pipe line through their property. Hence, if injunction is granted against them then they will suffer heavy loss in comparison to that of the plaintiff. Resultantly, point Nos. 1 to 3 are answered in the negative.

As To Point No. 4 :-

33. The observations and findings rendered while deciding this application at Exh. 5 are confined solely to the adjudication of the present application. They shall not, in any manner, prejudice the rights or contentions of either party at the stage of final

hearing. Both plaintiffs and defendants shall be at liberty to lead evidence independently and to substantiate their respective claims on merits.

34. In the backdrop of the above discussion and in view of the negative findings on Point Nos. 01 to 03, this application is deserved to be rejected. As every party approaches the court to exercise a lawful right with a hope to seek an equitable relief, it is not appropriate to impose the costs of this application on the plaintiff. Therefore, both parties must bear their own cost of this application. Hence, in the result and in answer to point No. 4, the following order is passed:-

ORDER

1.	The application for temporary injunction is hereby rejected.
2.	Both parties to bear their own cost.

Peth-Vadgaon
Dtd. 18/11/2025

sd/-
(R. S. More)
3rd Jt. Civil Judge, Junior Division,
Peth-Vadgaon