

:: ORDER BELOW EXH. 5 ::

Perused the application, say-cum-written statement (Exh.25) filed by defendant no.1, say-cum-written statement (Exh.26) filed by defendant no.2 and the documents placed on record. Heard both sides. Through this application, the plaintiffs are seeking temporary injunction restraining defendants from causing obstruction to the use of lane admeasuring 5 ft. X 40 ft. situated in Grampanchayat Property House No.7 for in-grace & out-grace to his house, which is more particularly described in the application (Hereinafter referred to as "the suit property").

2) Points for determination and findings thereon alongwith reasons stated thereto are as under :

<u>Points</u>	<u>Findings</u>
1] Whether the plaintiffs have made out prima-facie case ?	: In the Negative
2] Whether there is balance of convenience in favour of the plaintiffs ?	: In the Negative
3] Whether irreparable loss will be caused to the plaintiffs, if the application is not allowed ?	: In the Negative
4] What order ?	: The application is rejected.

REASONS

As to point no. 1 :

3) Herein, it is the contentions of the plaintiffs that Grampanchayat House No.7 was originally owned by one Dadu Bala Desai. Plaintiff and the defendants are the cousins of Dadu Bala Desai. Dadu Bala Desai died issue-less on 12/03/1993. After the demise of Dadu Bala Desai, alongwith the defendants, the plaintiff no.1 was entitled to inherit his properties. However, defendant no.1, behind the back, recorded his names to the Grampanchayat House No.7. By taking undue advantage of the said entry the defendant no.1 filed civil suit bearing R.C.S.No.57/2016 against the plaintiffs. In the said civil suit, the defendant no.1 failed to get injunction order. Due to that, he annoyed and on 14/04/2016, stored the construction stones over the suit property and thereby blocked the way. According to the plaintiff, the suit property is being used by them since long for in-grace and out-grace to their house from the main road. Except that, they are not having any other alternative way. He made his grievances before Tahasildar, Bhudargad. Tahasil office Bhudargad conducted panchnama over the suit property. They have also made grievances about it before the police of Bhudargad Police Station. However, they have also not taken any steps.

4) On the other hand, it is the contentions of the defendant nos.1 & 2 in their say (Exh.25 & 26 respectively) that

they alone are the owners and possessors of the Grampanchayat House No.7. Their names are rightly incorporated to it at the instance of deceased Dadu Bala Desai. According to them, there is no as such easementary way passing through the Grampanchayat House No.7. In fact, the plaintiffs have demolished their old house and intentionally left the opening of their new construction towards the northern side of the suit property and now in order to give trouble to them, they have filed present false suit and injunction application.

5) Learned advocate of the plaintiffs submits that the disputed way is in use since last more than 30 years. The existence of said road is evident from the panchnama dated 28/05/2013 carried out by the Circle Inspector. The obstruction created by the plaintiffs in the said way is also evident from the photograph placed on record. The entry of the name of defendant no.1 to the Grampanchayat House no.7 and rights of the defendants over the said property are challenged by the plaintiffs before appropriate forum.

6) On the other hand, learned advocate of the defendants submits that there was not any as such way from the Grampanchayat House No.7. The plaintiffs are trying to give trouble to them by filing false applications and are also trying to create a new way through the Grampanchayat House No.7. There is nothing on record, which makes clear the existence of such a way. On the contrary, the panchnama dated 28/05/2013 prepared by Circle Officer and the hand-sketch map prepared by the Circle

Inspector shows that there is other alternative way to the plaintiffs to approach to the main road.

7) In the light of submissions made on behalf of both the sides, I have perused the pleadings and documents placed on record. Admittedly, Grampanchayat House No.7 is standing in the name of defendants. Yet the said entry is not cancelled the Hence, at this stage, there is no alternative to conclude that the defendants are the owners and possessors of the Grampanchayat House No.7.

8) Now, the question is whether the suit property is an easementary way in existence for the benefit of the plaintiffs to in-grace and out-grace from their house to the main road. At this stage none of the document placed on record shows the existence of easementary way over the suit property for the benefit of the plaintiffs to in-grace and out-grace. The hand-sketch map dated 28/05/2013 prepared by Circle Inspector shows that on the northern side of the house of the plaintiff, there is a way having width of 4 ft. heading towards the east. there are also other residential houses around the house of the plaintiff. Those residents are have another way to approach to the main road. that it means there is alternative way to the plaintiff also.

9) Panchanama dated 28/05/2013 drawn by Circle Inspector Kadgaon shows that the plaintiffs have made claim of way through the suit property. That it means they are claiming new way through the suit property. Therefore, at this stage,

prima-facie, it appears to me that the plaintiffs are having other alternative way to approach to the main road. The question whether the disputed way is an easementary way of the plaintiff or not needs adjudication at the conclusion of trial. However, at this stage, I do not find in the contentions of the plaintiffs that the disputed way is an easementary way in existence and except that, they are not having any other alternative way. Hence, in my view, there is no alternative way. Hence, I answer point no. 1 in the negative.

As to point nos.2 & 3 :

10) In view of negative finding to the point no.1, it is clear that there is no prima-facie case in favour of the plaintiff. Therefore, there is no question of balance of convenience and irreparable loss. As above stated, there is other way on the northern side of the house of the plaintiffs running in East-West direction. Therefore, the said way is available to the plaintiffs to approach to the main road. The Grampanchayat resolutions nowhere shows that the suit property is an easementary way available to the plaintiff. Circle Inspector has also not referred the suit property as an easementary way. According to the panchnama, it is the way claimed by the plaintiffs to approach to the main road. In such circumstances, in my view, if the defendants are restrained from using Grampanchayat House No.7, then they will suffer irreparable loss. On the contrary, the plaintiffs will not suffer comparatively more hardship or irreparable loss if the application is rejected. Hence, there is no

balance of convenience in favour of plaintiffs and irreparable loss will not be caused to the plaintiff, if the application is not allowed. Hence, I answer point nos.2 and 3 in the negative.

As to point no.4 :

11) In view of negative findings to the point nos.1, 2 & 3 the application will have to be rejected. Accordingly, I answer point no. 4 and pass the following order .

:: ORDER ::

The application is rejected.

Sd/-

Place : Gargoti.
Date : 24/11/2016.

(S. S. Parave)
Civil Judge Junior Division,
Gargoti

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

Name of the Stenographer	:	Mr. S. D. Sarang
Name of Court	:	Court of Civil Judge Junior Division, Gargoti, Tah. - Bhudargad, District - Kolhapur
Date of Dictation	:	24/11/2016
Order signed by the P.O. on	:	24/11/2016
Order uploaded on	:	24/11/2016