

:: ORDER BELOW EXH. 30 ::

The instant application is filed by the plaintiff under Order XXXIX, Rule 1 & 2 of Civil Procedure Code against the defendant no.3 for restraining her from causing obstruction to him while using the way. Perused the application and say filed thereon at Exh. 35, plaint, written statement & say filed by defendant no. 3 at Exh.17, affidavits filed by plaintiff of his witnesses and photographs filed by the plaintiff. Heard learned advocates for both sides.

2) On the pleadings of both the parties and submissions made by learned Adv. A. M. Patil for the plaintiff and Adv. P. G. Bote for the defendant no.3, following points arise for determination and my findings are recorded against each point for the reasons given below.

<u>Points</u>	<u>Findings</u>
1] Whether plaintiff has made out existence of prima facie case in his favour ?	: Yes
2] Whether balance of convenience lies in his favour ?	: Yes
3] Whether irreparable loss would be caused to plaintiff, if injunction is not granted ?	: Yes
4] What order ?	: As per final order

REASONS

As to point nos. 1 to 3 :

3) In order to sustain an order of temporary injunction under Order 39, Rule (1)(c) of the Code of Civil Procedure, it is for the plaintiff to establish that he has prima-facie case for grant of temporary injunction as prayed for, that he would suffer irreparable loss, if temporary injunction as prayed is refused ; and that balance of convenience lies in his favour. All these three aspects are based on law of equity. The relief of temporary injunction is the discretionary one.

4) The plaintiff has come with the case that the suit way is kept common for both the parties by the defendant no. 3 and both the parties are using the same for approaching their respective fields and for transportation. The case of plaintiff has been seriously disputed by the defendant no. 3. Hence, here the only core question is required to be seen, as to whether the plaintiff has prima-facie case and whether plaintiff proves his entitlement for the reliefs claimed ?

5) At the outset, reference is required to be made to the written statement and say filed by the defendant no. 3 at Exh. 17 wherein she has specifically admitted the existence of suit way from the northern side in para no. 5. The 7/12 extract of the suit property at Exh. 7 shows that plaintiff and defendant no. 3 are co-sharers in the suit property. As stated earlier, as the defendant no. 3 admitted the existence of suit way from the suit property and block no. 402, prima-facie, at this juncture, the contentions raised by the plaintiff appears to be true and well-founded. Furthermore, the photographs and affidavit of plaintiff's witness supports to the

case of the plaintiff. The defendant no. 3 has not filed on record any counter-affidavit.

6) At this juncture, the plaintiff succeeded to prove his entitlement to the reliefs claimed. Therefore, the theory put up by the plaintiff appears to be more probable than the theory put up by the defendant no.3. In civil case, degree of proof is preponderance of probabilities.

7) Having considered all these aspects, it is seen that the plaintiff has succeeded to show prima-facie case that he is entitled for approaching to the suit property from the suit way passing through suit property and block no. 402. Thus, the law of equity favours the plaintiff. Since, the defendant no.3 admitted the existence of suit way in her written statement at Exh.17, there is no question of irreparable loss being caused to the defendant no.3, if injunction is granted and as such there is no balance of convenience lying in defendant no.3's favour. Hence, all the points are answered in the affirmative. In the conclusion, I pass the following order.

:: ORDER ::

- i] Application is allowed.
- ii] The defendant no. 3, her agents or any other person on her behalf are hereby restrained temporarily from causing obstruction to the the plaintiff while using the suit way till final disposal of the suit.
- iii] Costs in cause.

Sd/-

Civil Judge Junior Division,
Gargoti

Date : 20/01/2015

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	:	20/01/2015
Order signed by the P.O. on	:	20/01/2015
Order uploaded on	:	20/01/2015