



**ORDER BELOW EXH. NO. 20 IN R.C.S. NO.
147/2021**

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Ajit Govind Kulkarni Vs. Kalammadevi Seva Sanstha Bhakt Mandal,
Jainyal Th. Parasharam Vitthal Shinde & Ors.

By way of this application, plaintiff seeks ad-interim injunction so as to restrain defendants from disturbing the possession of the plaintiff in/over the suit property. It is the contention of plaintiff that, defendants have appeared in the present suit, however, they have not filed the written statement yet. However, defendant No. 1 to 6 are asserting that, they will create a road of 16 feet wide in the suit property so as to proceed towards ***Kalammadevi-Mandir***. Defendants have also scheduled meeting on 24/10/2021 for the same purpose and they have started taking efforts towards the same. Plaintiff tried to explain defendants about the situation however, they snapped at the plaintiff. Then, defendants have brought J.C.B. and tractor in/over the suit property and they tried to create a road in/over the suit property. Thus, plaintiff prays for status-quo in the form of ad-interim injunction against the defendants.

02. Defendants appeared in this proceeding and resisted this application by way of their say below Exh. No. 21 wherein they stated that, application of plaintiff is false and misleading. Plaintiff has not explained the change in circumstances since the institution of suit i.e. from 13/10/2021 till today. Thus, plaintiff can not claim ad-interim injunction as of right. There are no sufficient materials on record to show the prima facie case. It is the contention of

defendants that, there exist a road about 14 to 15 feet since a long time in the suit property. It is being used by the villagers, devotees and people till today. Plaintiff is aware of this position and he is just trying to close this road and so, instituted this suit with ulterior motive of closing this road. Thus, this application is not tenable and is liable to be rejected.

03. Perused the application and the say. Heard the learned advocate for both the sides. The learned advocate for the plaintiff has reiterated contentions of this application in his submissions. The learned advocate for defendants submitted that the area of suit properties is around 03H. But the photos placed on record by plaintiff does not even cover 01 *guntha*. *It is the truth that* the road exists in the suit property and the farmers and villagers, other people would be badly affected if the injunction is granted as they would not have access to the road. It is important to be noted that, *Grampanchayat* is also not made party in the present suit.

04. In order to analysis this application, it is important to understand the case of the plaintiff. The suit property is situated at Jainyal, Tal. Kagal bearing Gat No. 235, area 03H. 14 R. Plaintiff is having rights and interest in half share of the suit property i.e. 01H. 57 R and the other half belongs to Dhananjay Govind Kulkarni. It is the contention of plaintiff that, suit property is being cultivated by him through laborers. Crop of *soyabean*, *tobacco* is being cultivated in the suit property. Defendants are not concerned with the suit property. There is ***Kalammadevi-Mandir*** outside the boundaries of

the village in Jaini towards the eastern side. Defendants are trying to create road in order to go towards the ***Kalammadevi-Mandir*** through the suit property. Accordingly, resolution bearing No. 26 dtd. 11/08/2021 was passed. Thereafter, plaintiff approached defendant No. 1 to 6 and tried to inquire about the road towards the ***Kalammadevi-Mandir and the defendants*** expressed their clear intention about the road. Thereafter, plaintiff came to know that, defendant No. 1 and 2 has applied before Tahsildar, Kagal regarding road. It is the contention of plaintiff that, there exist an independent road in order to commute to and for from ***Kalammadevi-Mandir*** which run through Gat No. 100 and it is about the 15 to 16 feet wide and it is also well connected to Kapashi-Nipanni road. This road is also used by all the villagers and the devotees. Hence, there is no need to create new road. However, defendants are trying to take unfair advantage of the fact that, plaintiff is residing at Kolhapur for the sake of his medical practice and trying to create new road through the suit property. On 10/10/2021, defendants and some of other people came in the suit property and inspected the suit property and also threatened the laborers working for plaintiff and clearly expressed their intention that the road would run through the suit property. Similarly, same incident happened on 11/10/2019 and defendants reiterated their intention of creation of road in the suit property. In this way, defendant No. 1 to 6 has obstructed to the plaintiff in his possession in/over the suit property. Hence, he is constrained to institute the present suit and then also apply for interim injunction. As the present suit would take its own time to come to its conclusion, hence, plaintiff prays for ad-interim

application injunction till the interim injunction.

05. The reply of the defendants to this ad-interim application is reiteration of their submissions as well as say.

06. After considering the pleadings of the plaintiff, it is necessary to go through the documents placed on record by the plaintiff so that, it can be seen whether *prima-facie* case exists in his favour and whether ad-interim relief requires to be granted. A village Form No. 8/A (Exh. No. 3 Sr. No. 1 and 2) reflects that, in the suit property that the half-half share in the suit property belongs to plaintiff and his brother Dhananjay. Village form No. 7 and 12 also reflects that, the names of plaintiff and his brother Dhananjay. On minute perusal of the village form No. 7 and 12 extracts below Exh. No. 3, Sr. No. 3, it appears that, there is *pot-kharaba* area of 00H. 0.06 square mts., over the total cultivable area of 3H. 14 square mts. There is no doubt that suit property belong to plaintiff and is under the cultivation of plaintiff and his brother Dhananjay. Although, *pot-kharaba* area is reflected in the village form No.7 and 12 extracts in the suit property, the nature of the *pot-kharaba* area is not specified therein., hence, no conclusion can be drawn upon it.

07. Plaintiff has placed on record certified copy of the resolution bearing No. 26 passed by *Grampanchayat Jainyal* on 11/08/2021 (Exh. No. 3/4). As per this resolution, it is reflected that road going towards ***Kalammadevi-Mandir*** is not recorded in the *Grampanchayat* records. Hence, the funds can not be made

available to it, so, it is necessary to prepare the records and accordingly, it is being directed to the concerned authorities to apply before Tahsildar. Now, this resolution do not mention about the suit property nor there is any apprehension that, they are going to create new road in the suit property. Hence, the contention of the plaintiff is not being substantiated by this document. The next document relied by plaintiff is about the invitation card (Exh. No. 3/ 5). This card reflects that, some fund is available for the road going to Kalammadevi Mandir. But, again there is no mention about the type of road and where it is being created. Hence, no conclusion can be drawn with the help of this document. Rest of the document are the photographs by plaintiff claimed to be of the suit property. Now, in photograph below Exh. 3, Sr. No. 6, it appears that, plaintiff is standing with newspaper addition of 'Pudhari' in his hands. Thus, it appears that, some sort of news is also published in the newspaper regarding the road towards ***Kalammadevi-Mandir***. *But no such document is placed on record.*

08. From the resolution by Grampanchayat Jainiyal and the invitation card by the political party, sufficient conclusion cannot be drawn that, prima-facie case exists in favour of plaintiff. Rather, after considering the contention of defendants that, suit property is an agricultural land of about 3 hectare, it being a vast area and very well accessible, contention of the roads has to be adjudicated effectively and completely after considering the defence of defendants as well. Photographs placed on record by plaintiff do not reflect that any sort of road is being created. Even sensitive issue

about the public sentiments, religious feeling regarding *Kalammadevi-Mandir* are also involved. Hence, it would be appropriate that, the defendants file the written statement as well as say to the interim application and opportunity be granted to the defendants to present all the necessary documents, materials with regard to the contentious issues. This may helpful for the effective adjudication of the interim application. Thus, I do not find any urgency to grant ad-interim relief as also there are no sufficient materials placed on record by plaintiff to show that a new road is being created in the suit property. Accordingly, this application is decided.

09. Defendants are directed to file their say to the interim application forthwith and also adjudicate on the interim application below Exh. No. 5.

Date : 09/11/2021
Place : Kagal.

Sd/-.
(Katkar Vijaya N.S.)
Jt. Civil Judge, Junior Division,
Kagal.