



**ORDER BELOW EXH. 5**

1. This is an application by plaintiff for interim relief of injunction restraining the defendant from disturbing plaintiff's right to access his home from the lane situated at western side of plaintiff's house. As per plaintiff he is owner and residing in C.S.No. 58. There is a lane on the western side of his house. Said lane is of 4 foot in width and running from East to West ( the "Lane").

2. As per plaintiff he is using the lane to get access to his home from the main road. However, defendant is trying to disturb plaintiff's right to access his home through the lane. Defendant has also threatened the plaintiff. Defendant is trying to grab the lane and also plaintiff's house by blocking the way. Hence, this application.

3. Defendant has appeared in the suit. However, he has not replied the application despite ample opportunities were given. Thus, this court has proceeded to hear and decide the application on merits.

4. Heard. Perused record. The points crop for determination and reasoned findings thereon are as under :-

<b>Sr.No.</b>	<b>Point for determination</b>	<b>finding</b>
1	Whether plaintiff proves that prima facie case is in his favour?	Yes.
2	Whether plaintiff proves that balance of convenience lies in his favour?	Yes.
3	Whether plaintiff proves that he would suffer irreparable loss or damage if the interim relief as prayed is not granted in his favour ?	Yes.

4	What Order ?	As per final order
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### **REASON**

5. In support of his case plaintiff has placed reliance upon following documents :-

Sr.No.	Particular
1	Certified copy of Property Card extract of C.S.No 58 at Exh. 3 Sr. No.1
2	Certified copy of assessment extract of property No. 39 at Exh. 3 Sr. No. 2
3	Certified copy of assessment extract of property No. 40 at Exh. 3 Sr. No. 3
4	Certified copy of Property Card extract register of C.S.No 58 at Exh. 3 Sr. No.4
5	Certified copy of Map of C.S. No. 58 at Exh. 3 Sr. No. 5
6	One photograph at Exh. 3 Sr. No. 6

### **AS TO POINTS 1 TO 3 :-**

6. As the points 1 to 3 are interlinked, with a view to avoid unnecessary repetition, these points are discussed together.

7. As per plaintiff he is owner and residing in house property situated at C. S. No. 58. To show his title and possession in C.S.No. 58 plaintiff has produced on record the property card extract of C.S.No. 58 at list Exh. 3 at Sr. No. 1. As per said property card plaintiff along with his mother, sister and brother is holding C.S.No. 58.

8. Further, to show his independent house in C.S.No. 58 plaintiff has produced on record the assessment extract of house No. 39 at Exh. 3 Sr. No. 2. Said document records plaintiff's name to house No. 39 in "khadak lane".

9. As per plaintiff C.S. No. 58 is his ancestral property. To support this averment plaintiff has produced on record the extract of property card register at Exh. 3 Sr. No. 4. Said document records the name of plaintiff's father Mr. Vithu Gopal Kawade as holder of C.S. No. 58. Said extract further bears the remark "Ancestral".

10. Lastly to show the existence of lane providing access to C.S. No. 58 plaintiff has produced on record the map of C.S.No. 58 and also the photograph of the lane respectively at Sr. Nos. 5 and 6 of list Exh. 3. On perusal of map at Exh. 3 Sr. No. 5 it appears that the Map is showing a lane offering access to C.S.No. 58 from the main road. Further, the photograph also reflects the said position. Thus, prima facie it appears that there is a lane running from main road to C.S.No. 58.

11. As per plaintiff defendant is disturbing plaintiff's right to get access of his property at C.S.No. 58 by threatening the plaintiff and also unlawfully restraining him from using the lane. Said averment by plaintiff is on oath and defendant has even failed to deny the same. Consequently, the averment by plaintiff on oath pertaining to the disturbance to his right to use the lane has to be prima facie accepted.

12. As discussed here-in-above the lane is offering access to defendant's house from main road. Thus, if said lane is blocked at the hands of defendant, it may result into immediate loss and prejudice to plaintiff's right to access his home. Further, from the very nature of said disturbance it is clear that the said loss and prejudice can not be compensated in terms of money.

13. Thus, this court is of view that the prima facie case for

grant of interim relief is in plaintiff's favour, and he is the plaintiff only who would suffer irreparable loss if the interim relief as prayed is not granted. If that is the case it is needless to mention that the pendulum of balance of convenience favours plaintiff. Hence, points 1 to 3 are answered in affirmative.

**AS TO POINT NO. 4**

14. From the aforesaid discussion it is clear that the plaintiff is entitled for interim relief of injunction. Hence, in answer to point No. 4 following order is passed :-

**ORDER**

1. Application is allowed.
2. Defendant is hereby temporarily restrained from causing any disturbance or creating any obstruction to plaintiff's right to use the lane till the final hearing of this suit.
3. Cost in cause.

Date: 12/03/2019

(M. H. Shitole)  
C. J. J. D. Radhanagari  
Kolhapur

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	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	12/03/2019
Order signed by the P.O. On	12/03/2019
Order uploaded on	13/03/2019