

Regular Civil Suit No : 13/2014

**ORDER BELOW EXHIBIT NO. 5**

01. This is an application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 filed by the plaintiffs. The defendants filed their Say and written statement at Exhibit no. 20. Perused the application and Say. Heard both the parties at length.

02. The contention of the plaintiffs is that land bearing Gat no. 208 situated at village Adoli, Taluka Radhanagari, was owned by Babu Dattu Dhokare and others. The plaintiff no.5, the father of the plaintiffs no. 1 to 4 was cultivating the said land as tenant. Babu and other 24 co-sharers sold the said lands to the plaintiffs no. 1 to 4 vide a registered sale deed dated 15/3/2011. Since then the plaintiffs are in possession of the suit property. The defendants have neither any right, title or interest in the suit property nor they have any land adjacent to it. The plaintiffs have constructed a road for ingress and egress of the villagers on the boundary of Gat no. 208 and Gat no. 207. The said road is of 10 ft wide. The defendants are asking for 12 ft road through the suit property, for which the plaintiffs have serious objection. The defendants have damaged the crops in the suit property in 2013-14. The suit property is in the possession of the plaintiffs and they claim temporary injunction against the defendants from disturbing their possession.

03. The defendants in their Say at Exhibit no. 20 have denied the contents of the application. They state that the suit property i.e. Gat no. 208 is owned by the plaintiffs and some other 10 persons. Gat no. 206 is the land situated towards the North of main

road of Adoli. The said land is “Gairan”, used for the purposes for cattle grazing. It is the version of the defendants that there is 8 to 10 ft road through the suit property since long. The said road is used for the purposes of ingress and egress by all the villagers. The villagers carry their agricultural produce through the said road. The plaintiffs have intentionally closed that road to cause inconvenience to the entire village. Hence, the defendants pray for the rejection of the application.

04. The plaintiffs have filed the following documents in support of their case, which I have thoroughly perused -

Sr. No.	Description	Exhibit
1	Map of Gat No. 208 of village Aadoli, Tal. Radhanagari, Dist. Kolhapur dated 24/12/2013.	—
2	7 x 12 extract of Gat No. 208 of village Aadoli, Tal. Radhanagari, Dist. Kolhapur dated 24/12/2013.	—
3	7 x 12 extract of Gat No. 206 of village Aadoli, Tal. Radhanagari, Dist. Kolhapur dated 24/12/2013.	—
4	7 x 12 extract of Gat No. 209 of village Aadoli, Tal. Radhanagari, Dist. Kolhapur dated 24/12/2013.	—
5	7 x 12 extract of Gat No. 207 of village Aadoli, Tal. Radhanagari, Dist. Kolhapur dated 24/12/2014	—
6	Notice issued by Tahasildar, Radhanagari dated 16/01/2014	—
7	Certificate issued by Talathi dated 02/09/2013	—
8	Photo copies of suit property (10 photos)	—

05. The defendants have filed the following documents in support of their defence, which I have thoroughly perused -

Sr. No.	Description	Exhibit
1	Photograph of suit property	—
2	Photograph of suit property	—

3	Photograph of suit property	—
4	Order passed by Tahasildar Office, Radhanagari in SR/1/2014 dated 28/02/2014	—
5	Spot Panchnama prepared in front of Tahasildar, Radhanagari	—
6	Notice issued by Circle Officer, Radhanagari dated 13/03/2014	—
7	Extract of Mutation Entry No. 649 dated 28/11/1980	—
8	Extract of Mutation Entry No. 86 dated 15/12/1966	—
9	Extract of Consolidated Gat Number	—
10	Order passed by Collector regarding Gat No. 206	—
11	Panchnama prepared by Tahasildar, Radhanagari	—

06. The following points crop-up for my consideration on which I record my findings together with reasons therefor as under-

Sr. No.	Points for determination	Findings
1.	Whether the plaintiffs have prima facie case ?	IN NEGATIVE.
2.	Whether the plaintiffs would suffer irreparable loss if injunction is not granted in his favour ?	IN NEGATIVE.
3.	In whose favour the balance of convenience lies ?	The Defendants.
4.	What order ?	Accordingly.

### **REASONS**

07. **AS TO THE POINTS NO. 1 TO 3 :**

As these points are intermingled I decide them together.

The plaintiffs have filed the photographs of the suit property. I have perused the same. From the perusal of the revenue records of the suit property, it is evident that Gat no. 208 i.e. the suit property is in joint possession of the plaintiffs and certain other persons. The

plaintiffs have suppressed this material fact. The plaintiffs have made the entire Gat no. 208 as the suit property. The plaintiffs have no locus standi to join the shares in the suit property belonging to others as suit property. Suppression of material fact, dis-entitles a person from claiming an equitable relief such as injunction.

08. On the contrary, the defendants have produced relevant documents on record as listed above. From the perusal of the documents of the defendants it is evident that there is a record of the said road as alleged by the defendants. The fact of Gat no. 206 is a Gairan is admitted by both the parties. The plaintiffs are certainly in possession of some portion of the suit property i.e. Gat no. 208. However, from the averments of the application it does not transpire that how the said road going through the suit property is affecting the plaintiffs only and not the other co-sharers. It is to be noted that it is not the case of the plaintiffs that the said road is going through only his portion out of the Gat no. 208. On the contrary the plaintiffs have joined the entire Gat no. 208 as the suit property. Hence, I have reached to the conclusion that the plaintiffs have tried to misguide the Court by suppressing material fact of joint possession and by making entire Gat. No. 208 as the suit property.

09. From the above discussion, I observe that the plaintiffs have not moved this Court with clean hands. They neither have prima facie case nor they would suffer any irreparable loss if the injunction is not granted in their favour. The balance of convenience also lies in favour of the defendants. To succeed in the application for temporary injunction, plaintiff has to prove all the three ingredients viz, prima

facie case, irreparable loss and balance of convenience, conjunctively. If the plaintiff, fails to prove either of these, he is not entitle for the relief. In the instant case, the plaintiffs have failed to prove either of the ingredients. Hence, they are not entitle for the relief of injunction as prayed for. Therefore, I pass the following order-

**ORDER**

01. The application below Exhibit no.5 is rejected with costs.

Radhanagari.

sd/-

Date :- 30/12/2014.

(A. S. Atre)

Civil Judge, Jr. Dn., Radhanagari.