

Order below Exh. 5 in R.C.S. No.91/2013.

1. This is an application by the plaintiff vide Order 39 rule 1 and 2 of the C.P.C. for the temporary injunction.
2. In short it is the contention of the plaintiff that he has filed suit for setting aside order passed by Tahsildar, Renapur on 23.05.2013 in file no.2012/KM/KV-32. It is contended by the plaintiff that he is the owner and possessor of land gat no.125 adm.12 H 15 R, out of it he owns 5 H 04 R and defendant no.5 is owner of 3 H 11 R land, defendant no.6 is owner of 69 R land, defendant no.7 is owner of 1 H 56 R land and one Sadhu Vishvanath was owner of 1 H 69 R land. Above lands are situated at village Tattapur Tq. Renapur.
3. It is the contention of the plaintiffs that the lands of defendant no.1 to 4 in gat no.126 to 130 are situated on the Western side of plaintiff's land gat no.125 and there is South North existing bandh in between the plaintiff and defendant's land and there are 40 standing trees on said bandh which are fruit bearing trees. It is further alleged that defendants have made encroachment on plaintiff's land therefore plaintiff has filed suit bearing RCS No.727/97 and said suit decreed and now said matter is pending before Hon'ble High Court, Bench Aurangabad. The defendant no.1 to 3 and their interested persons have filed one suit bearing RCS No.313/08 in this court for perpetual injunction praying to restrain the defendants from cutting down those trees and said suit is dismissed on 13.4.2012.
4. It is further contended by the plaintiff that defendants 1 to 3 by suppressing all these previous litigation and judgment, filed one application before Tahsildar, Renapur u/sec.143 of the Maharashtra Land Revenue Code, 1966 (In short MLRC) and requested for road in between land gat no.125 and block no.126 to 132. It is contended that Tahsildar has not properly appreciated the proceeding and conducted

inquiry in absence of the plaintiff and delivered his judgment on 23.5.13 which is quite illegal. It is contended that there is absolutely no necessity to create way in between the plaintiff's and defendant's land in South-North direction. There is shiv road towards South side of the defendant's land to ingress their land. It is contended that the subordinates of the Tahsildar have conducted false and baseless inquiry behind the back of the plaintiff and passed said order. The defendants by taking disadvantage of the order of the Tahsildar are illegally entered on South-North bandh of the plaintiff and they have started to cut down the standing trees and trying to create a new way. Therefore, the plaintiff has prayed for temporary injunction.

5. The defendant no.1 to 4 filed their say at exh.22 and resisted the application of the plaintiff. They have specifically contended that the lands of defendant no.1 to 4 are situated in land gat no.126 to 131 at village Tattapur and on the East side of above gat numbers land of the plaintiff and defendant no.5 and 7 are situated. They have admitted that there is shiv road on the South side of their land, there is one bandh running South-North which is owned by defendant no.1 to 4, from the said bandh one channel is dug from North to South direction which is 7 to 8 feet in depth and 5 feet in width and said road is in existence since their forefathers. Due to obstruction by the plaintiff to the said road there is inconvenience to them. As there was no road to defendant no.1 to 4 and as the land owner of gat no.125 i.e. plaintiff and defendant no.5 to 7 were causing obstruction to the road they have filed application before Tahsildar and after due inquiry the Tahsildar has sanctioned road. It is contended by them that the Tahsildar has rightly passed the order of sanctioning the road. It is contended by them that plaintiff in order to harass the defendants and to prevent them from cultivating their lands has filed this false suit. On these grounds the defendants have prayed to reject the application.

6. The following points arise for my determination and my finding thereon along with its reasoning are as follow-

	<u>POINTS</u>	<u>FINDINGS.</u>
01	Whether the plaintiff has prima-facie case in this matter?	Yes.
02	Whether balance of convenience lies in the favour of the plaintiff?	Yes.
03	Whether the plaintiff would have to suffer irreparable loss if the order of temporary injunction is not granted in his favour?	Yes.
04	What order?	Application exh.5 is allowed.

REASONS.

As to Point No.1.

7. It is the contention of the plaintiff that the order passed by Tahsildar Renapur in file No.2012/KM/KV-32 dated 23.5.2013 in respect of granting of new way in between land gat no.125 and 126 to 131 is illegal, therefore, said order is challenged by this suit. It is argued on behalf of the plaintiff that the plaintiff and defendants have dispute regarding the suit property since from 1997. Defendant no.3 and other some persons have filed suit RCS No.313/2008 for perpetual injunction, said suit was dismissed by court on 13.04.2012. Immediately, the defendants have filed application before Tahsildar, Renapur and claimed that they have right of way from the common bandh which has been obstructed by the plaintiff and it is necessary to remove obstruction. In above said suit the defendants did not have any grievance regarding the road. But as soon as their suit was dismissed, they have filed the application before Tahsildar on 10.12.2012. Tahsildar has without giving any opportunity to the plaintiff, inspected the spot. He had issued notice to the concerned parties to file their say. The

first date to file say was 04.03.2013 but prior to that i.e. on 19.01.2013 Tahsildar has inspected the spot. He has also disposed of the proceeding hurriedly. He has recorded wrong finding about the road. He has contended in his order that there was previous ancestral road but there is no record of such road. The defendants have not claimed that they do not have any alternative road but Tahsildar has recorded said finding and passed the order. As the defendants have claimed obstruction to the road Tahsildar ought to have held the proceeding u/sec.5 of the Mamlatdar's Court Act, 1966 but he has tried the proceeding u/sec.145 of the Maharashtra Land Revenue Code. He has also obtained permission to cut down the trees standing in the nala on said bandh. Therefore, the order passed by Tahsildar is illegal and it is therefore, necessary that the defendants shall not implement said order. If the order is implemented the very purpose of the suit may be frustrated and the plaintiff would have to suffer irreparable loss.

8. Learned advocate Shri D. T. Sarwade for the defendants argued that the plaintiff has filed a baseless suit by joining two causes in single suit. Two questions are involved in this matter. One is regarding road and another is about the trees standing on the disputed area. At the West side of the gat no.125 there is one nala and at the West side of said nala there is bandh owned by the defendants. The defendants have claimed a road from said bandh and accordingly Tahsildar himself visited and inspected the spot. He prepared panchanama and he has recorded clear finding that the defendants have no alternative road. Some of the co-sharers from gat no.125 have given consent to have a road from the common bandh. The plaintiff and defendants were present at the time of said inspection, they have signed the panchanama. Tahsildar after inspection has given opportunity to all the parties to adduce their say and also of hearing. Thereafter he has decided the matter on merit. His order is sound and well supported with the reasons. He has granted road vide section 143(2) of M. L. R. Code. He has granted the road from the

property of the defendants. Prior to create the road it is necessary to cut some trees standing on the bandh belonging to the defendants. The Tahsildar has also followed due procedure and obtained permission from the Sub-Divisional Officer, Latur. The Sub-Divisional Officer has heard all the parties. The plaintiff claimed before S.D.O. that he is having some property on West side of the nala and the trees are situated in said nala are his own property. S.D.O. while granting permission has recorded finding that the trees shall be sold through public auction and the proceeds shall be deposited to the State so as to dispose the same to the real owner. The plaintiff has suppressed the fact regarding the order passed by S.D.O. He is trying to challenge the order of the S.D.O. under the guise of this suit. Order of S.D.O. cannot be challenged vide section 143 of the M. L. R. Code. The plaintiff has no reason to have land towards West side of nala. The Tahsildar has passed the reasoned order which is legal one and it cannot be challenged in this suit. If the defendants would not get road as granted by Tahsildar it would be difficult for the defendants to cultivate their lands and they would have to suffer irreparable loss. On the contrary, the plaintiff would not have to suffer any loss.

9. It is admitted fact on record that the defendants have filed an application before Tahsildar which has been granted. By said order a road from the common bandh in between gat no.125 and 126 has been sanctioned. He has ordered that the defendants shall construct a road from their own gat no.126 adjacent to common bandh. It is also a fact on record that Tahsildar has visited the spot on 19.1.2013 and conducted the spot inspection and prepared panchanama. The panchanama prima-facie shows that the plaintiff and the defendants were present for spot inspection. The other documents filed on record prima facie show that some of the co-sharers from gat no.125 have given consent to create such road from the common bandh of gat no.125 and 126. It also prima-facie seems that after inspection Tahsildar has given opportunity to all the parties

to file their say and after hearing the parties he has passed order on 23.5.2013. Prima-facie I do not found any legal force in the submission that the Tahsildar has not given any opportunity to the plaintiff to defend the proceeding.

10. But mere for this reason no prima facie conclusion can be drawn that the order passed by Tahsildar is legal. On perusal of the order passed by Tahsildar it prima-facie seems that the defendants have filed an application alleging that 'there is an ancestral road from common bandh of gat no.125 and 126. The owners of gat no.125 have obstructed the said road forcefully and hence there is no other road to approach to their property. It is difficult for them to cultivate their own property and therefore, it is necessary to remove said obstruction from said road.' From the own order of Tahsildar it seems prima facie that the concerned applicants i.e. the present defendants have not claimed any new road from gat no.125 and 126 but claimed that old road is in existence and same is obstructed by present plaintiff. Tahsildar has granted said application u/sec.143 of M. L. R. Code. Sec. 143 of M. L. R. Code reads as under-

143. Right of way over boundaries- *(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.*

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) *Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.*

11. It is clear from the very wording that sec.143 of the Code invest power on Tahsildar to inquire into and decide the question to have a road through the boundaries of the survey number. He has to grant a new road as per the requirements and necessity of the land holders. Tahsildar cannot decide the question of obstruction u/sec.143 of the Code. If Tahsildar has to decide any question regarding the obstruction to the road he has to deal with the matter u/sec. 5(2) of the Mamlatdar's Court act, 1906. Prima-facie it seems that the Tahsildar has passed the order without applying the proper law. Prima-facie the order passed by Tahsildar, Renapur is suffering from said illegality.

12. Tahsildar while recording the finding has mentioned in its order that the applicants in the said proceeding had the ancestral road from the common bandh from gat no.125 and 126. He has recorded another finding that present plaintiff and some other persons have obstructed said road. But further he has recorded another finding that there is one South-North Channel situated on said bandh. Near about 42 Babul trees, 2 tamarind trees, 5 Neem trees and Nilgiri trees are standing on said canal. Both the plaintiff and the defendants have admitted that these trees are aged about 30 to 40 years. If it is the factual position the question arises on what basis Tahsildar has recorded the finding that there was any ancestral road from said bandh. It is nowhere mentioned in the entire order on what basis the Tahsildar has formed his opinion that there was a road on the bandh between gat no.125 and 126. There is absolutely no documentary evidence to show the existence of said road from said common bandh. On the contrary, the spot inspection report itself shows that there is a canal in between gat no.125 and 126; therefore, the finding recorded by Tahsildar regarding the existence of the road prima-facie seems false.

13. It is argued on behalf of the defendants that they are creating the road from their own property. No doubt, the operative order of Tahsildar too denotes that the defendant shall construct 10 feet road from gat no.126. But while passing said order it is also mentioned that said road shall be constructed from the common bandh adjacent to the channel. The plaintiff has filed some photographs on record which prima-facie show the existence of the canal and no such bandh as claimed by Tahsildar is in existence on the spot. It is also a fact on record that so as to create the alleged road Tahsildar has obtained the permission from the S.D.O. to cut down the trees standing on the bandh. The S.D.O. has granted permission. But the photographs prima-facie shows that all the trees are standing in the canal. If the road is to be granted from land gat no.126 and not from the said channel then the question arise why there is a need to cut down the trees. That means though Tahsildar has ordered the road from the bandh in gat no.126, the real intention reveals prima-facie that the proposed road is to be constructed through the channel between gat no.125 and 126. It is settled principle of law that no road shall be granted through any water course or channel. Therefore, prima-facie the order of Tahsildar seems suffering from these illegalities.

14. It is argued on behalf of the defendants that the plaintiff is trying to challenge the order passed by SDO and it is against the provisions of law. No doubt, there is no provision in M. L. R. Code to challenge the order of SDO in Civil Court. But it is also a fact on record that the plaintiff has not challenged said order under this suit. Moreover, the alleged order is not a directory order but only permission in pursuant to the representation made by Tahsildar so as to create a road from gat no.125 and 126. It is a mere procedural part so as to execute the order of Tahsildar. It is not an independent executable order. Therefore, it cannot be said that the plaintiff is trying to challenge any order passed by S.D.O. in the civil court. Prima-facie, from the entire record it seems that

the order passed by Tahsildar is suffering from some illegalities. The bonafide dispute regarding the legality of the order passed by Tahsildar is raised in this matter. Therefore, I hold that the plaintiff has prima-facie case in this matter. In the result I answer point no.1 in the affirmative.

AS TO POINT NO. 2 & 3.

15. Some evidence and facts need to be discussed collectively for the determination of these points. The repetition of those facts or evidence is possible if these points are determined separately. To avoid the repetition I am determining these points collectively.

16. The plaintiff has prima-facie shown that the order passed by Tahsildar is suffering from illegality and there is bonafide dispute regarding implementation of the order passed by Tahsildar, Renapur. It prima-facie seems that if the road granted by Tahsildar has brought in existence it seems that the channel between plaintiff and defendant's land can be blocked. It is a fact on record that to create said road the trees standing in channel are ordered to be cut down. Once the old trees are cut down, those cannot be re-constructed. If the road is created the very nature of the subject matter would be changed and it would frustrate the suit. Unless the question is decided on its own merits the plaintiff has balance of convenience in his favour so as to maintain status-quo over the suit property. If the road is created and the trees are cut down the very purpose of the suit may be frustrated and if the channel in gat no.125 and 126 would be blocked and the plaintiff would have to suffer irreparable loss. It is a fact on record that no road is in existence from the bandh of gat no.125 and 126 since from 40 to 50 years. That means the defendants are having suitable alternative ingress so as to cultivate their property since from last many years. As such there would be no loss to the defendants if the order of temporary injunction is granted against them. The comparative hardship is more to the

plaintiff than the defendants. In the light of above discussion I answer point no.2 to 3 in the affirmative.

As to Point No.4.

17. The plaintiff has proved that he has prima-facie case in this matter. The balance of convenience also lies in his favour and if injunction is refused he would have to suffer irreparable loss. The comparative hardship is more to the plaintiff than the defendants. In the result, application exh.5 is liable to be allowed. To that effect I pass the following order.

O r d e r.

1. Application exh.5 is allowed.
2. Defendants No. 1 to 4 or anybody claiming through them is hereby restrained by this ad-interim temporary injunction order from creating any road on the basis of the order passed by Tahsildar, Renapur from the common bandh between gat no.125 and 126 and also from cutting down the trees standing on said bandh till the disposal of the suit.

Dated: 21.10.2013
Renapur

(A. A. Yadav)
Civil Judge, Jr. Division, Renapur