

MHLA110005192022



ORDER BELOW EXH.5 IN
RCS NO.1037/2022
VITTHAL VS. STATE & ORS.

1. Plaintiffs have filed this application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 in respect of the suit way situated at village Sawari, Tal. Nilanga, Dist. Latur (hereinafter for the sake of brevity referred to as the “the suit way”) for restraining defendants from obstructing peaceful possession of plaintiffs and from creating new way passing through northern side of land of plaintiffs.

2. Defendant Nos.3, 4, 8, 9 & 10 and defendant Nos.6, 7, 11 & 12 resisted the application by filing say cum written statement at Exh.45 and 42 respectively.

3. Heard Ld. Counsel for plaintiffs and defendant Nos.3, 4, 8, 9 & 10 and defendant Nos.6, 7, 11 & 12.

4. Considering the rival submissions, following points arise for determination, to which my findings thereon for the reasons are as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Who established prima-facie case?	Plaintiffs.
2.	In whose favour balance of convenience lies?	Plaintiffs.
3.	Who will suffer irreparable loss?	Plaintiffs.
4.	What order?	As per final order.

: REASONS :

As to Point Nos.1 to 3 :-

5. These points are intermingled, therefore, they are being

discussed together to avoid repetition.

6. Tersely, case of the plaintiffs is that, the land of plaintiff No.1 and 2 are adjacent to each other and there is small stream passing through the northern side of land of plaintiff No.1. Land of defendant No.3 is situated on the eastern side of Survey No.7/C and he is trying to create new way from the northern side of land of plaintiffs. All the owners of Survey No.7 are approaching from southern boundary mark of village Koyajiwadi towards the west of Makni to Saraswati road. If the small stream is will be obstructed by any mode, then the rain fall will be enter in the land of plaintiffs. Southern boundary mark of village Koyajiwadi is available to defendants for approach to their land. Defendant No.3 filed false an application on 28/08/2021 with defendant No.2 for removal of obstruction and the said application was allowed by defendant No.2. The panchnama was prepared behind back of plaintiffs and it was not signed by plaintiffs. Defendant No.2 vaguely passed the order eventhough there is no any way passing from the northern side of land of plaintiffs. He neither referred the nistar patrak nor exact location is mentioned in the said order. Defendants are threatening to disposes plaintiffs and to create new way through their land. Hence, it is prayed to restrain defendants from causing obstruction to the peaceful possession of plaintiffs over the suit property and from creating new way through the suit property.

7. In rebuttal, defendant Nos.3, 4, 8, 9 & 10 and defendant Nos.6, 7, 11 & 12 have contended that, defendant No.3 had filed application before Mamalatdar Court for right of way to approach

his land and to approach land of defendant No.4 to 13. The said application was allowed after spot inspection, preparing panchnama and after hearing both sides. Therefore, plaintiffs have no legal right to file the suit for cancellation of the said order. The revision petition filed by plaintiffs before S.D.O. is also dismissed. The suit of plaintiffs is also barred under Section 26-A and B of the Mamlatdars Courts Act. Plaintiffs have not challenged the order of S.D.O. before proper forum. There is and was the path way in between the lands of plaintiffs and defendants and they were using the said path way since 100 years to approach their lands. There is no any stream in existence in the said survey number. In fact, there is path way which is passing from village boundary of Makni Koyajiwadi towards the land of plaintiffs. Therefore, plaintiffs are not entitled to claim the relief of injunction. Hence, it is prayed to reject the application.

8. Before adverting to the factual discussion, it would be just to notice the legal position with regard to temporary injunction. The law of injunction is well settled that, granting or refusing the temporary injunction is governed by three well established principals (a) Whether prima-facie case has been made out, (b) Whether balance of convenience is in their favour, (c) Whether petitioner will suffer irreparable injury, if temporary injunction is not granted the party who seeks aid of injunction must show that the act complained of is in violation his rights and whether there is fair and substantial question to be decided by the parties and there is bonafide contention between parties. If such contentions are available, then relief needs to be granted. It then

becomes the duty of the court to consider material placed before granting or refusing grant injunction and consider the documents if any, before an interim relief can be passed. The prima-facie case does not mean a case to succeed but which fairly needs an inquiry. At the time, while granting relief the court has also to take into account whether the interim relief claimed is in aid of final relief so as to maintain the status-quo ante or preserve the status of parties (Ref. Deshmukh & Company V/s. Avinash 2005(3) MLJ. 387).

9. Ld. Advocate for plaintiffs argued that, the Civil Court has jurisdiction to decide the correctness and the validity of order passed by Mamlatdars Courts alongwith the adjudication of question of right of way. Suit filed by plaintiffs is well within limitation. There is neither any entry of existence of way in nistar patrak nor the Tahasildar has observed any footpath or way from northern side in his judgment. The Tahasildar ought to have determine whether there is any existence of way available to defendant No.3 while exercising his power under Section 143 of M.L.R. Code. When he exercising his power u/Sec.5 of Mamlatdars Courts Act, he has to verify the records that the footpath is available in the village map or in nistar patrak. However, he has not given any findings regarding the existence of way. On southern side of Survey No.7 the boundary mark Koyajiwadi is existed which is available to defendant No.3 and the other land holders of Survey No.7 to approach their land. Defendants are forcibly trying to create new way without any legal record from the land of plaintiffs. The Ld. Mamlatdars had not followed the procedure

under the Act. Both the Courts failed to consider that defendants had alternate access. Plaintiffs having prima-facie case, balance of convenience also lies in their favour and if the injunction is not granted irreparable loss cause to plaintiffs. Hence, it is prayed to allow the application.

10. It is not in dispute that, defendant No.3 Madhav More had filed proceedings under Section 5 of Mamlatdars Courts Act, 1906 alleging that the plaintiffs had obstructed the passage passing through Gat No.7 and thereby prevented them from using their easementary right of way for approach to their lands. The said proceedings were contested by plaintiffs. It is further not in dispute that, in view of the said application, Ld. Mamlatdars had given direction to the Circle Officer, Aurad Shahajani for spot inspection. Accordingly, he visited the spot on 22/03/2020 and prepared spot panchnama. It is further not in dispute that, Ld. Mamlatdars Courts examined the parties and witnesses and relying upon the panchnama by order dated 20/10/2021 allowed the application of defendant No.3 and directed plaintiffs to remove the obstruction over the approach way of defendants passing through Survey No.7/A. It is also not in dispute that, the said order of Mamlatdars was challenged by plaintiffs before Sub-Divisional Officer, Nilanga. However, said revision application was rejected by Sub-Divisional Officer on 04/06/2022 by confirming the order of Tahasildar.

11. Admittedly, Section 5 confers powers on the Mamlatdars to address the grievances and give quick relief to agriculturists in relation to the land used for agriculture. The orders passed under

this Section are not appealable but are subject to revision. A plain reading of Section 22 would clearly indicate that the order passed under the Act are not conclusive and the aggrieved party can seek relief from the Civil Court. The provision of the Act demonstrate that the Civil Court is not bound by the decision of the authorities under the Mamlatdars Act. The party in whose favour the Mamlatdars has passed an order can enjoy such order only until such order or decision is otherwise decreed or ordered or such person is ousted by a competent Civil Court. Therefore, civil courts have jurisdiction to hear the disputes arising from orders passed by Mamlatdars under Mamlatdars Courts Act,1906.

12. The record reveals that Niab Tahasildar, Nilanga has passed the order relying upon the spot panchnama dated 22/03/2021. On perusal of spot panchnama, it reflects that there is west-east, north-south and again west-east passage for stream of water running through Survey No.7/A and same is alleged to be used by the defendants for approach to their lands. It can be noticed from the order of Tahasildar dated 20/08/2021 that, there is south-north Sawari-Koyajiwadi shiv road situated at the western side passing through Survey No.6 and 7 is available to the defendants for access to their land and they were using the same since long. However, it is observed that defendants had demanded the way from the west-east, south-north stream passing through the northern side of Survey No.7 and not the shiv road. Therefore, it appears that Learned Mamlatdars has allowed the application of defendants granting the way to them as per their demand and convenience. However, from the order itself it is clear that, the

shiv road is available to defendants for access to their land. It also appears from the rough map that, the road which is passing from the southern side is also available to the defendants.

13. Admittedly, there is no any record showing the way passing through northern side of Gat No.7 but it is only a passage for stream of water. As already mentioned in the above para that prima-facie it appears that alternative way is available to defendants for access to their lands. Learned Mamlatdars has passed the order of clearance of the disputed way. Therefore apprehension of plaintiffs that defendants are creating way through Gat No.7 seems plausible. Therefore, I find prima-facie case in favour of plaintiffs.

14. Since, the prima-facie case is in favour of plaintiffs, they are entitled for protection so that they could be able to enjoy their property. Defendants do not have any right to obstruct plaintiffs or to create new way from Gat No.7 when alternative way is available to them. In these circumstances, if plaintiffs are not protected by way of interim injunction, they will not be able to enjoy their property and will suffer irreparable loss. Hence, balance of convenience also tilts in favour of plaintiffs. Consequently, I answer Point Nos.1 to 3 'in the affirmative'.

As to Point No.4:-

15. In view of my aforesaid findings as to Point Nos. 1 to 3, the application is liable to be allowed. The costs of application be given as per final decision of the suit. In result, I proceed to pass the following order:-

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ORDER

- 1) Application is hereby allowed.
- 2) Defendants are hereby restrained from obstructing peaceful possession of plaintiffs and from creating new way passing through Gat No.7.

Nilanga.
Dt.:- 06/05/2025

(Smt. V. D. Bhosale)
Jt. Civil Judge Sr. Dn., Nilanga.