

MHLA11007902023



ORDER BELOW EXHIBIT NO.5 IN
RCS NO.268/2023
HARIOM VS. TAHASILDAR

1. Plaintiff has filed this application under Order XXXIX Rule 1 & 2 of Code Of Civil Procedure, 1908 in respect of 30R land out of Survey No.5 situated at village Anandwadi, Tal. Nilanga, Dist. Latur (hereinafter for the sake of brevity referred to as the “**the suit property**”) for restraining defendants from obstructing peaceful possession of plaintiff over the suit property.
2. Defendant No.3 has resisted the application by filing say cum written statement at Exhibit No.28. Defendant Nos.1 and 2 have resisted the application by filing say cum written statement at Exhibit No.39.
3. Heard Learned Counsel for plaintiff and defendants at length.
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?	Defendants.
2.	In whose favour balance of convenience lies?	Defendants.
3.	Who will suffer irreparable loss?	Defendants.

4.	What order?	As per final order.
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: REASONS :

As to Point Nos.1 to 3 :-

5. The discussion and appreciation of evidence for point Nos.1 to 3 is common, hence they are clubbed and answered by me in consonance for the sake of brevity and foreclosing the repetition of the facts.

6. Tersely, case of the plaintiff is that, he is the owner and possessor of the suit property. Defendant No.3 is the purchaser of Survey No.4/3/C, who had filed application for creating new way from western side of the suit property which was allowed by defendant Nos.1 and 2 without following due procedure of law. Defendant No.3 had also filed RCS No.206/2003 for perpetual injunction which was decreed against Bhartibai Dhabale. Plaintiff's land is in Survey No.5 and there was no way passing through Survey No.4 and 5. Defendants are trying to create new road from western side of suit property through the common bandh in between Survey No.4 and 5. Defendants are cutting the trees planted over the common bandh. The alternative way is available to the defendant to egress and ingress over the land of defendant No.3. Defendants are attempted to create new road and trying to cut the trees. Hence, it is prayed to restrain defendants from creating new way and from causing obstruction to his peaceful possession over the suit property.

7. In rebuttal, defendant Nos.1 and 2 have contended that, defendant No.3 on 20/06/2023 had given application for

obstruction to his right of way. The said obstruction was removed as per order dated 03/07/2023 after serving the notices and preparing panchnamas. Plaintiff at the time of panchnama admitted for removal of obstruction. However, he has not measured his land, therefore, again on 30/10/2023 notice regarding fixation of the boundaries and removal of obstruction and remain present on the spot on 04/12/2023 was issued to plaintiff. During the proceeding, plaintiff also given the written statement that he will not obstruct the defendant No.3 from passing through the common bandh. Accordingly, panchnama was prepared. As per judgment and decree in RCS No.206/2003, the Court has also observed the right of way of defendant No.3 of passing through the common bandh. Defendant Nos.1 and 2 are following due procedure of law. Hence, it is prayed to reject the application.

8. Defendant No.3 has contended that, he had filed the application for removal of encroachment over the existing way passing through Survey No.4/B and K by Datta Dhabale, Sudhakar Patil and Padmakar Patil. After the hearing the said application was allowed by Tahasildar by order dated 27/08/2004. He had also filed suit RCS No.206/203 against Bhartibai Dhabale in respect of the way situated between Survey No.4 and 5. Since thereafter defendant No.3 is enjoying the suit way to approach to his land without any obstruction. However, adjacent owner despite the said way, therefore, he moved application for removal of obstruction. Defendant No.1 had given direction to defendant No.2 to take legal action against the wrong doers and to remove the obstruction

caused over the suit way accordingly. Defendant No.2 initiated legal action for removal of obstruction by visiting the spot and preparing panchnama. They have sent the notice to plaintiff towards the execution of order dated 27/08/2004. Despite the same, plaintiff is creating obstruction and hurdle in the official work of defendant Nos.1 and 2. Hence, it is prayed to reject the application.

9. Before advertng 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).

10. It is not in dispute that, land of plaintiff is situated in Survey No.5 and land of defendant No.3 is situated in Survey No.4/3/C. It is further not in dispute that, disputed way is passing through common bandh of Survey No.4 and 5. It is also not in dispute that, Tahasildar has passed the order in favour of defendant No.3 by noticing the existence of way over the common bandh. It is also not in dispute that, father of defendant No.3 had filed application for removal of obstruction which was allowed by Niab Tahasildar on 27/08/2004 by confirming the earlier right of way available to father of defendant No.3. It is also not in dispute that, RCS No.206/2003 filed by father of defendant No.3 against Bhartibai Dhabale was decreed and defendants in that suit were restrained from obstructing father of defendant No.3 to use the suit way. It is further not in dispute that, defendant on 20/06/2023 filed application for removal of obstruction of way by the father of plaintiff and adjacent land owners. It is admitted fact that, on the basis of the application the directions were given by defendant No.1 to defendant No.2 for visiting the spot and preparing the panchnama. It is further not in dispute that, the notice for removal of obstruction was issued by defendant No.1.

11. Plaintiff has filed this application restraining the defendants from causing obstruction to his peaceful possession over the suit property and also for restraining them from creating new way from the western side of the suit property through common bandh of Survey No.4 and 5. It is also contention of plaintiff that defendants are trying to cut the trees planted over the

common bandh.

12. Plaintiff also in support of his application has filed affidavits of Kamlakar Dive, Prashant Mali, Chandrakant Jadhav stating that there is no any existing way situated at western side of land of plaintiff. They further stated that, the alternative way is also available to defendant No.3 for approach to his land from Gairan land situated at the western side of Survey No.4.

13. On perusal of documents produced on record it is seen that plaintiff had given application to the Forest Officer, Latur on 08/01/2024 at Exh.40/1 for taking action against the defendants for cutting the mango and tamarind trees with the help of JCB situated at western side of his land with intention to create new way without obtaining their permission.

14. However it is necessary to mention here that, in the year 2003 the father of defendant No.3 had filed the suit bearing RCS No.206/2003 against Bhartibai Dhabale for perpetual injunction for restraining her from obstructing the suit way used for approach to his land. The said suit was decreed and Court has observed existence of easementary right of way of father of defendant No.3 through common bandh of Survey No.4 and 5. in the said suit it is also observed that no alternative way is available to father of defendant for approach to his land. Though the said judgment is passed exparte against Bhartibai Dhabale, no one has not challenged the same. Therefore, the judgment and decree passed in RCS No.206/2003 remained intact.

15. It is further seen that Tahasildar has also passed the order

in favour of defendant No.3 noticing the existence of his right of way over the common bandh. Furthermore, Niab Tahasildar on 27/08/2004 has also confirmed the earlier right of way available to father of defendant No.3 while allowing the application for removal of obstruction on the suit way filed by father of defendant No.3 .

16. On going through the documents, it appears that, on the basis of application of defendant No.3 on 20/06/2023, Tahasildar, Nilanga issued notice to father of plaintiff and others for fixation of boundaries of their land within 15 days and for removal of obstruction in the suit way passing through in Survey No.4 and 5. On perusal of the panchnama dated 02/08/2023, it appears that, plaintiff and others have caused obstruction in the suit way used by defendant no.3. It further appears that, Tahasildar, Nilanga on 30/11/2023 had given direction to Circle Officer to visit the spot along-with Land Measurement Officer and to prepare panchnama.

17. On perusal of panchnama dated 04/12/2023, it is seen that, father of plaintiff and adjacent land owners, who were obstructing the way granted to defendant No.3, have admitted that they will not commit such act in future. Considering the documents on records it appears that defendant No.3 and his forefathers were using the suit way since long and it prima-facie appears that the defendants are trying to remove the obstruction caused by father of plaintiff and the adjacent land owners in the suit way. There is no document on record showing the illegality in the notice issued by defendant No.1 and 2. Moreover, there is no

prima-facie documentary evidence produced on record to show that, alternative way is available to defendant No.3 for access to his land. Therefore, it appears that, defendant No.1 and 2 are implementing the orders of Court. Thus, the notice issued by the defendant No.1 and 2 to plaintiff prima-facie appears to be legal, valid and as per the provisions of law. Hence, I do not find prima-facie case in favour of plaintiff.

18. As plaintiff has not made out prima-facie case, balance of convenience does not tilt in his favour. In these circumstances, if the injunction is granted in favour of plaintiff it will cause inconvenience and loss to defendants. Per contra, no loss would be caused to plaintiff by rejecting his relief of interim injunction. Hence, I answer Point Nos.1 to 3 'in the negative'.

As to Point No.4 :-

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

ORDER

- 1) Application Exh.5 is hereby rejected.

Nilanga.
Dt.:- 08/07/2024

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