

MHLA110021452022



ORDER BELOW EXH.53 IN
RCS No.1434/2022
GULCHAND VS. COLLECTOR & ORS.

1. Plaintiffs have filed this application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 for restraining defendant No.1 to 3 from interfering and obstructing possession of plaintiff over suit property and suspending the operation and execution of the order passed by defendant No.3.
2. Defendant Nos.1 to 3 resisted the application by filing say on the application.
3. Heard Learned Counsel for plaintiffs and defendant Nos.1 to 3.
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 plaintiff is that, plaintiff No.1 is owner and possessor of the suit property. Defendant No.4 to 20 filed an application before defendant No.3, Tahasildar, Nilanga for removal of obstruction from the footway running through Survey No.8 under the Mamlatdar's Court Act. Defendant No.4 to 20 claiming the aforesaid footway is their customary way which they have been using since their forefathers. Defendant No.3 passed the order of local inspection and on the basis of illegal panchnama dated 04/08/2021, he allowed the application of defendant No.4 to 20 without following due procedure of law. The order passed by Tahasildar, Nilanga is unsustainable in the eyes of law as there is no provision to create new way. There is neither any existing way shown in the village map nor in 7/12 extract. The order of Tahasildar is illegal and contrary to the existing facts. Therefore, it is necessary to restrain defendant No.1 to 3 from executing the order passed by defendant No.3. Defendant No.1 to 3, on the basis of the aforesaid order, causing interference and obstruction in the peaceful possession of plaintiff over the suit property. Hence, it is prayed to restrain defendant No.1 to 3 from implementing the said order.

7. In rebuttal, defendant Nos.1 to 3 contended that, plaintiffs have filed this suit for quashing the order of defendant No.3 dated 31/01/2022. The appeal filed against that order is also dismissed by defendant No.2 and the said order is not challenged in this suit. Plaintiffs had opportunity file appeal before Appellate Authority or to file the suit within 30 days before the Court. However, the present suit is instituted on 17/10/2022. The order

of defendant No.3 is passed after taking evidence. Plaintiffs have not argued on the application below Exh.5 till filing of this application. As per the first report of Bailiff, regarding the residence address of defendants on dated 30/11/2022, the actual details of residence were not known to anybody. Plaintiffs instead of applying for alternative mode have filed application for re-issuance of summons. The allegations of plaintiffs are false. Hence, it is prayed to reject the application.

8. 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. It 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. It is not in dispute that defendant No.4 to 20 had filed an application under section 5 of Mamlatdar's Courts Act, 1906 which was allowed by Tahasildar, Nilanga. Further, it is not in dispute that revision application preferred by plaintiff against the order of Tahasildar, Nilanga under Section 23 of the said Act is also dismissed by Sub-Divisional officer, Nilanga by confirming the order of Tahasildar. It is further not in dispute that agricultural lands of plaintiff and defendants are situated at village Hasori. It is further not in dispute that disputed way is going through land of plaintiff situated in Gat No.8.

10. The learned counsel for plaintiff argued that defendant No.4 to 20 had filed formal application before Mamlatdar seeking restoration of customary way alleging that the same is intercepted by plaintiff. It is submitted that there is no way passing through his land but only a stream of water running through his field and that cannot be the way. There is nothing on record to show the existence of way passing through Gat No.8. The learned Tahasildar passed the order beyond the purpose and scope of Mamlatdar's Courts Act, 1906. Tahsildar is creating new way under the garb of order. Therefore, it is urge to suspend the order and its execution till final disposal of suit.

11. Per contra, Ld. Counsel for defendant No.1 to 3 submitted that plaintiff has filed the suit on 17/10/2022 for quashing the order of Tahasildar dated 31/01/2022. He either can file an appeal

before appellate authority or to file suit within 30 days before court. This suit is not within limitation. Plaintiff has not challenged the order passed by Sub Divisional officer. Alternative mode is available to plaintiff for seeking relief, eventhough he has filed this application. Therefore, he urge to maintain the order passed by the authorities.

12. Before proceeding further, it is necessary to see the legal aspects regarding appeal against the order of Mamlatdar passed under Section 5 of the Act. Section 23 of the Mamlatdar's Courts Act states that there is no appeal against an order passed by Mamlatdar under this Act and the only recourse against Section 5 is to file a revision petition with the Collector who can then review the decision. However, it is important to note that the revision order is not considered final and aggrieved party may still have the option to approach a Civil Court to challenge the decision of Mamlatdar. Therefore, Civil Court still retains the jurisdiction to hear disputes arising from orders passed under Section 5, if necessary. However, Court may expect to first exhaust the revisionary remedy available under section 23 before approaching it.

13. Moreover, as regard to the point of limitation raised by Learned Counsel for defendants, it is true that a challenge to an order passed by Tahasildar, falls under Order 21 Rule 97 of Code of Civil Procedure generally has a limitation period of 30 days, but it deals with the situation where someone is obstructing the delivery of possession of property in an execution proceeding, allowing the obstructing party to raise objections. Moreover, as per the Section

143(4) any person who is aggrieved by the decision of Tahasildar, may institute a civil suit within a period of one year from the date of such decision, to have it set aside or modified. However, this provision is only to challenge the order passed under Section 143 of MLRC through civil suit. The disputed order is passed under Section 5 of Mamlatdar Courts Act and provisions of MLRC are not applicable to the said Act. Moreover, no limitation is prescribed for the provision. Hence, limitation prescribed under Article 120 will be applicable. Therefore, considering the above discussion, the suit is within limitation.

14. Admittedly, defendant No.4 to 20 approached the Mamlatdar under Section 5 of the Act for the removal of obstruction to access to their lands alleging that Hasori to Chincholi way is their customary way which they were using since their forefathers. However, it is apparent that the application tendered by them is not in consonance with requirement of Mamlatdar's Courts Act. There are no requisite details about existence or obstruction as to customary way. No particulars of cause of action to initiate proceeding are mentioned. Although, Section 5 confers jurisdiction upon Mamlatdar to pass the necessary orders regarding the removal of the obstruction, the exercise of the power is subject to procedure prescribed under section 7 to 15 of the Mamlatdar's Courts Act. However, it is seen that there is no compliance of the aforesaid section. The order of Tahasildar appears to have been passed merely in reference to the Panchnama dated 04/08/2021 which stipulates existence of customary way from the stream passing through the eastern side

of Gat No.8. However, on perusal of village map of Hasori, no stream is shown at the eastern side of Gat No.8 but it is towards the western side of Gat No.8 passing through north-south direction. Neither Village map nor 7/12 extract showing existence of any way passing through Gat No.8. The Nissar Patrak of Village Hasori mentions about the rough road from Hasori to Usturi passing through east-west direction. The said way is shown at the western side of Gat No.8 and it is not disputed way. Therefore, prima-facie I do not find substance in the contention of defendants.

15. It is seen that the order passed by Tahasildar, Nilanga is confirmed by Sub Divisional Officer, Nilanga and Tahasildar has issued notice to plaintiffs regarding removal of obstruction or the clearance of disputed way. However, prima-facie it does not appears that there is existence of way through the stream passing through Gat No.8 as alleged by defendants. Therefore, I found prima-facie case in favour of plaintiffs.

16. As prima-facie case is in favour of plaintiffs, balance of convenience tilts in their favour. In these circumstance, if the injunction is not granted in their favour, it will cause inconvenience and loss to them as the disputed way is passing through their land. Per contra, no loss would be cause to defendants by granting relief of interim injunction. Hence, I answer Point Nos.1 to 3 'in the affirmative'.

As to Point No.4 :-

17. In view of my aforesaid findings as to Point Nos.1 to 3,

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the application is deserves 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:

ORDER

- 1) Application Exh.53 is hereby allowed.
- 2) The order passed by defendant No.3 dated 31/01/2022 and its execution is hereby suspended till final disposal of suit.

Nilanga.
Dt.:- 29/01/2025

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