

Order below Exh.05 in R.C.S.No.130/2016

(Ranjana Vs. Rajiv)

(Dated 02.02.2018)

Plaintiff filed this suit for perpetual and mandatory injunction, wherein she is seeking temporary injunction to restrain defendant, his agents and anybody claiming through him from making further construction over suit way till final disposal of suit.

2. On the other hand defendant filed W.S. vide exh. 35 by filing pursis he prayed for treating his W.S. as a say to this application. He denied the claim of plaintiff and prayed for rejection of this application.

3. Considering submissions by both the parties, following points arise for determination I record my findings as follows.

	<u>Points</u>	<u>Findings</u>
1	Whether any prima facie case is made out ?	Yes.
2	In whose favour, the balance of convenience lies ?	In favour of the plaintiffs.
3	To whom, irreparable loss would be cause ?	To the plaintiffs.
4	What order ?	The application is allowed.

REASONS**As to Point Nos.1 to 4 :**

4. According to plaintiff, she is the owner and possessor of house property in plot no. 32 out of land gut no 432/1/7 as described in plaint. She purchased said plot from Munna Husainsab Shaikh on dated 07.03.2008 vide sale deed no. 472/2008. After mutation, it become house no. 4211. She constructed house on said plot. There is 5 feet width way in the southern side of plaintiff's house, leave by Jagat Jagruti Housing Society Chakur.

5. Defendant is the owner and possessor of house property no. 2577 and neighborer of plaintiff from southern side, which is situated in Jagat Jagruti Housing Society. The defendant purchased it from Deelip Virbhadra Usturge vide sale deed no. 289/2012. But defendant falsely mention the boundary at northern side as House of P. S. Lasure and house of Plaintiff. Actually there is 5 ft. width way. The previous owner of defendant, purchase property no. 2577 from his father vide sale deed no. 1818/2010, in which the boundary of northern side is mentioned as 5 ft Width existing road. This way is treated as suit way.

6. On the basis of false boundaries shown in sale deed in the year 2012, defendant trying to encroach and construct over the suit way. Plaintiff requested not to construct, but defendant refused stating that the suit way is part of his plot. In the month of may 2016 defendant started construction of his plot including suit way without obtaining permission from Gram Panchayat Chakur. Plaintiff requested him not to construct over suit way, but defendant made unauthorised construction over the suit way as well as house balcony of defendant also covered compound wall of plaintiff.

7. The defendant construed 3 to 4 ft. wall in south north on the suit way up to 3 to 4 ft. to the extent of roof level and laid down slab on the suit way. The balcony of the defendant's house is obstructing the right of easement and ventilation of plaintiff is entirely closed. Plaintiff requested defendant on dated 14.09.2016 but he refused in filthy language. Plaintiff moved application to PS. Chakur and C.O of Chakur Nagar Panchayat for stopping illegal construction of defendant, but in vain. Ultimately plaintiff constrained to filed this suit for removal of encroachment and illegal construction. By this application she prayed for restraining defendant from making further construction over the suit way till the final decision of the suit.

8. Defendant admitted the respective ownership of plaintiff and defendant over their respective plots and they are neighbors and their plots are adjacent to each other. He also admitted the fact of purchasing his plot from Deelip Usturge in the year 2012 and admitted the boundaries mentioned in sale deed in the year 2012. He also admitted that Deelip Usturge purchased plot from his father in the year 2010, but denied boundaries mentioning 5 ft width road towards northern side. According to him there is no any way of 5 ft. width in existence towards the southern side of plaintiff's plot and the northern side of defendant's plot. The boundary was mistakenly printed instead of house of P. S. Lasure and house of plaintiff.

9. In the sale deed of plaintiff, it is mentioned that towards south there is Jagat Jagruti Housing Society, which is against the pleading of plaintiff. So plaintiff not came with clean hands. The sale deed of adjacent plot owner in land gut no. 432/1/7 i. e. plot no. 30 and 31 and boundaries shown in the adjacent plot owner shows that there is no such road to the southern side of their plots. Moreover the sale deed of plot owner in land survey no. 177/B bearing plot no. 1 in which on north side of the said plot it is not a road but a plotting of Munna Husainsab Shaikh. As there is no any suit way, plaintiff has no concerned with the construction of defendant. The construction of Defendant is as per sanctioned plan and permission of Nagar Panchayat Chakur. So there is no any obstruction and encroachment and also no question of easement and ventilation is arise. Hence plaintiff has no locus standi to claim injunction. Hence he prayed for rejection of the application.

10. Plaintiff filed various documents vide list of documents below exh 4 as copy of 8A extract of house no 4211, permission letter for construction, copy of sale deed day book no. 472/2008, 389/2012

and 1818/2010, copy of complaint filed at P.S.Chakur, copy of photographs of construction by defendant, copy of 8-D extract of house no. 2577.

11. On the other hand defendant filed various documents vide list of documents below exh. 32 and 40 such as sale deed of defendant day book no. 389/2012, 247/2004, 246/2004, 245/2004, 31/2004, 271/2006, copy of N.A. permission along with map, copy of lay out issued by Nagar Panchayat Chakur, Copy of Namuna 8A, copy of application to C. O. Nagar Panchayat Chakur, Construction permission along with sanctioned map issued by Nagar Panchayat Chakur, Affidavit of Nirmalabai Dhoble and Munna Husainsab Shaikh. He also relied upon **Ashailaka Kamlakar Limaye v/s Nilkanth Ganesh Pethe 2010(4) Mh.L.J.160** contending that the plaintiff could not make out a prima facie case on their own pleadings and contents of documents relied upon. Hence this application liable to be rejected.

12. Heard both the parties at length. The possession and ownership of respective plots are not disputed. The fact of purchasing respective plots from their respective previous owners vide register sale deed are also not disputed. The only contention of defendant is that, the boundaries mentioned in sale deed in the year 2010 is mistakenly printed. Defendant also filed an affidavit of his previous owner i.e. Nirmalabai Baburao Dhoble. She also contended that in the sale deed 536/1993 boundary regarding suit way was mentioned as suit way width 5 ft. due to oversight.

13. Plaintiff is claiming for removal of encroachment and illegal construction over the suit way to protect his easementary right and ventilation. Near about 3 to 4 feet construction is already completed. Too much time is lapsed for making compromised and settlement

between parties. The fact of existence or non existence of suit way is not very much clear merely upon filing of documents by both the parties at this interim level. The further construction is also stopped by way of maintaining Status quo. Defendant submitted that he stopped whole construction as per order of status quo. But plaintiff claiming restriction of construction over 5 feet suit way only.

14. In such circumstances, if further construction over the suit way is not stopped, the very purpose of the suit is frustrated. Moreover, the facts and circumstances of case cited and referred by defendant are different from this case. Hence with due respect the citation is not applicable to this case. So prima facie case is made out. If the construction is not stopped it would be caused irreparable loss to plaintiff. Hence balance of convenience is also lies in favor of plaintiff.

15. Moreover, this is the primary stage of proceeding. Sufficient evidence is yet to come before the court. The court is not in a position to settle the right between the parties. The court is acted upon materials placed by the parties before court. All these points can be well adjudicated after going through merits of the case. Now at this interim level, the court only relying on the submission made by the plaintiff and document filed by them. No hardship will be cause to the defendant if temporary injunction is granted in favor of plaintiff. Hence, I answered issues no.1 in the affirmative and issue no. 2 and 3 in favour of plaintiff. In answer to issue no.4 I pass following order.

ORDER

1. Application is allowed.
2. Defendant his agents and anybody claiming through them are

restrained from making further construction over the alleged 5 feet suit way till final disposal of suit.

3. Cost in cause.

Date: 02/02/2018

(Y.D.Koinkar)
Civil Judge, J.D., Chakur