

:: ORDER BELOW EXH. 05 IN REG. CIVIL SUIT NO. 31/2015 ::
(Anant..Vs..Bhimrao.)

01. This is an application under Order-39, Rule-1 and 2 r.w.s. 151 of the Code of Civil Procedure filed by the plaintiff.

02. In short the contention of the plaintiff is that, he has filed this suit for seeking relief of perpetual injunction against the defendant in respect of the house property bearing Gram-panchayat house No. 309 admeasuring East-West- South side : 20 feet, East-West-North side : 12 feet, South-North-East side : 54 feet and South-North West side : 58.6 feet. As per his contention, this suit house is the joint family property of him. However, for the sake of family arrangement it is mutated in his name alone. He is in actual physical possession of the suit house property. However, the concerned Gram-panchayat authorities are showing the area of suit house differently from time to time. He is doing the work of carpenter in the village and accordingly, he by intending to construct his house, obtained permission for construction from the Gram-panchayat, Sayyedpur on 10-01-2015. Thereafter, by collecting raw material for construction he constructed two rooms in R.C.C. admeasuring 14 x 14 feet as per the permission granted to him from the Southern side of his plot. Remaining portion of the plot is still open, on which the raw material for construction is lying. He is making construction of his house on his own plot by keeping sufficient distance from the house of Baburao Biradar and defendants. On 05-02-2015 he was constructing steps in his plot in front of newly constructed two rooms for having entrance in his house. However, at that time, the defendants illegally and unauthorizedly entered into the suit house and obstructed the work of construction of steps and threatened him to stop the further construction work. He is the lawful owner, in possession of the suit house. Defendants are having no concern with it. However, they are illegally obstructing him from making construction of his house. As

such, the prima-facie case and balance of convenience lies in his favour. So also, if the defendants will not be restrained from obstructing his construction work, it will cause irreparable loss to him only. On all these counts, he has prayed for order of temporary injunction against the defendants.

03. The defendant No. 1, though appeared failed to file his written statement and say to this application. The defendant Nos. 2 and 3 filed their joint written statement at Exh. 28 and vide pursis Exh. 29 submitted that, the same be treated as their say to this application.

04. The say of these defendants relevant for this application is that, the plaintiff is intending to grab the space of road by filing this false suit. As per their contention, in fact, the suit house alleged by the plaintiff is the place of Gram-panchayat road. However, the plaintiff in collusion with the Gram-panchayat authorities, though his area is only to the extent of 20 x 12 feet, got recorded his name to the excessive area. As per their further contention, the plaintiff by obtaining construction permission from the Gram-panchayat has constructed his house to the extent of two feet on road and even is intending to construct the stairs of his house on the Gram-panchayat road. If, the plaintiff will succeed in making such construction, it will obstruct the way of the defendants for having access to their house. As per their further contention, the plaintiff is not the owner of the suit house and merely by preparing false record, is claiming to be the owner of the suit house. Further they have contended that, after the construction of two rooms, no space belonging to the plaintiff is remaining on the spot and as he is trying to expand his construction on the road in front of their house, they have stopped the construction work of the plaintiff. They have not committed any illegal act and merely have requested the plaintiff not to construct on the Gram-panchayat road, from which they are having access

to their house. Even they have made a complaint against the plaintiff to the Gram-panchayat, but it has not paid any heed to his complaint. As such, by contending that, the prima-facie case and balance of convenience lies in their favour and in the event if, they will be restrained by the order of temporary injunction, it will cause irreparable loss to them only, they have prayed for rejection of the application.

05. While looking at these rival contentions of the parties, following points arise for determination to which findings are recorded followed by reasons thereunder:

Sr. No.	<u>P o i n t s</u>	<u>F i n d i n g s.</u>
1}	Whether the prima-facie case lies in favour of the plaintiff ?	<u>Yes.</u>
2}	Whether the balance of convenience lies in favour of the plaintiff ?	<u>Yes.</u>
3}	Whether irreparable loss or injury will be caused to the plaintiff in the event of refusal of the injunction order ?	<u>Yes.</u>
4}	What order ?	<u>As per final order.</u>

:: R e a s o n s ::

:: As to point No.1 to 3 ::

06. In support of his claim, the plaintiff has placed on record documents along with list Exh. 07. On the other hand, the defendant Nos. 2 and 3 have placed on record, documents along with list Exh. 23 and 26.

07. It is also essential to mention here that, as from the contentions raised by the parties, the exact situation of the properties of both the parties could not be revealed, in order to elucidate the matter between the parties as per order below Exh. 30, a Court Commissioner came to be appointed for local inspection of the suit property as well as property of defendants.

Accordingly, the Court Commissioner has submitted his report at Exh. 38 along with rough map.

08. Heard learned advocate Shri. B.M. Gundre appearing on plaintiff and learned advocate Shri. G.S. Biradar appearing on behalf of defendant Nos. 2 and 3.

09. The learned advocate of plaintiff submitted that, the documents placed on record by the plaintiff as well as the report of the Court Commissioner, prima-facie substantiates the contentions raised by the plaintiff in respect of the situation of the suit house property and the property of defendants. As per his contention, the plaintiff is making construction of his house lawfully and within the area owned and possessed by him, to which the defendants are causing obstruction. According to him, this fact of obstruction created by the defendants is categorically admitted by them in their written statement/say itself and therefore, the temporary injunction order in favour of the plaintiff is perfectly justified.

10. On the other hand, learned advocate of defendant Nos. 2 and 3 submitted that, as per the revenue record of the Gram-panchayat, the plaintiff is not the owner and possessor of the alleged suit house property. As per his contention, even the Court Commissioner has shown the area of road as the part and parcel of the house of the plaintiff, which is false. According to him, the plaintiff is not entitled to construct his house on the Gram-panchayat road and in the event if, the temporary injunction order will be passed in his favour, he will construct his house on the public road and thereby close down the way for access of the defendants to their house.

11. In this background, at the outset, it is essential to have the glance towards the documentary evidence placed on record by the parties.

Perusal of the documents filed along with list Exh. 07 and 23 shows that, in the Form No. 8 pertaining to the year, 2001-02, the area of the house of the plaintiff is shown as 300 square feet. At the same time, in another Form No. 8 pertaining to the year, 2001-02 itself the area of the house of plaintiff is shown as 640 square feet. This circumstance itself prima-facie shows that, there is some mistake in the Gram-panchayat record of the suit property.

12. Therefore, at this juncture, it is essential to have a glance towards the report submitted by the Court Commissioner. In his report, the Court Commissioner has categorically observed after taking measurements that, there is open lane situated from the Eastern side of the suit house property, which is having width of 02 feet and 10 ½ inches. So also, there is open lane in between the house of plaintiff and Vinayak Kadam having width of 3 feet 10 inch. So also, as per his report there is open lane in between the suit house and the house of Baburao Kadam having width of 3 feet 01 inch. Even as per the report of the Court Commissioner, the Gram-panchayat road nowhere passes from in front of the newly constructed house of the plaintiff. Rather the report of the Court Commissioner categorically shows that, the Gram-panchayat road passes from the Western side of the newly constructed house of the plaintiff. It also appears from the report of the Court Commissioner that, from the Northern side of the newly constructed house of the plaintiff, there is open space and it is not the road.

13. From this prima-facie circumstance appearing from the report of the Court Commissioner, the contention raised by the defendants that, the plaintiff is constructing stairs of his house on the Gram-panchayat road, appears to be false. From this prima-facie evidence placed on record, it appears that, the plaintiff is making his construction of his house as per the construction permission granted to him by the Gram-panchayat. Though, the defendants have tried to contend that, the plaintiff by making

construction of his house on the Gram-panchayat road is obstructing their access to their house, is not prima-facie substantiated by them at this juncture.

14. It is also pertinent to note that, the defendants themselves have contended in their say/written statement that, they have opposed the construction work of the plaintiff. This circumstance itself prima-facie substantiates the contention of the plaintiff about the obstruction at the hands of defendants. Therefore, at this juncture, it can not be said that, the apprehension of the plaintiff as contended by him is not unreasonable. Therefore, definitely the prima-facie case and balance of convenience lies in favour of the plaintiff. So also, there appears irreparable loss or injury to the plaintiff only in the event of refusal of temporary injunction order in his favour. Accordingly, by answering the points under determination in the affirmative, following order is passed. :

:: Order ::

- 1} The application is allowed.
- 2} The defendant Nos. 1 to 3 are hereby restrained from obstructing the possession and construction of the plaintiff over the suit house property which is more particularly described by him in paragraph No. 3 of this application, till the final disposal of the suit, by way of order of temporary injunction.
- 3} Cost in main cause.

Date : 22-12-2016.

Sd/-
{ D.P. Kasat }
Civil Judge Jr. Division,
Deoni.

I affirm, the contents of P.D.F. file Order are correct word for word as per the original Order.

Name of the stenographer : M.Y. Wadiwale.
Name of Court : Civil Court, Jr. Divn., Deoni.

Reg. Civil Suit No. 31/2015.

Date

: 7
22-12-2016.

Order below Exh. 05