

**ORDER BELOW EXH.05 IN CIVIL SUIT NO.472/2023**  
**( Vijay and others Vs. State & others )**  
**(Order Passed On the Day of 2<sup>nd</sup> August, 2024)**  
**CNRNO.MHLA170010412023**

Plaintiffs have filed application for grant of interim injunction against defendants, restraining defendants to create road from the bandh situated between S.No.20 and 21 by taking help of the order passed by defendant No.2 bearing 2021/Raste/kavi-997. It is submitted by plaintiffs that their agricultural lands are situated at Haldurga and they are permanent resident of Korangla, Tq. Ausa. Defendant No.1 is made necessary party to the suit. Defendant No.2 has passed order which is not within the four corners of the law. Defendant No.3 is Circle Officer. Defendant No.4 is Talathi. Defendant No.3 and 4 have prepared false panchanamas. Defendant No.5 is the Forest Officer. The Forest land is situated next to the land of plaintiffs. Therefore, the Forest Officer is made party to the suit. Defendant No.6 had filed application to defendant No.2 for getting road from common survey number bandh. Defendant No.7 is owner of adjacent agricultural land to plaintiffs.

2. Defendant No.6 had filed application to defendant No.2 on 06.12.2021 as per provisions under Section 143 for getting road from the survey number bandh. It was clearly mentioned in the application by defendant No.6 that, Amol Tike, Janumiya Daroge, Prabhu Shikhre, Walmiki Shikhre, Bhanudas Shikhre, Shrimant Adsule, Vijaykumar Adsule are obstructing him from using said road. Plaintiffs No.1 to 11 are owners and possessors of the land in S.No.20 and 21. Defendant No.2 has not sent notices to plaintiffs in the application filed by him before defendant No.2 bearing

2021/Raste/kavi-997 and obtained illegal order from defendant No.2. Though, defendant No.2 to 7 having knowledge that, Janumiya Daroge died on 09.04.2021, Prabhu Shikhre died on 02.06.2022, Shrimant Adsule died on 16.09.2021. They have not issued notices to owners of S.No.20 and 21 and in their absence passed order. Owners of S.No.20 and 21 were not made party to the application bearing 2021/Raste/kavi-997 before the Tahasildar (defendant No.2). Defendants No.2 to 7 in collusion with each other prepared false panchanama by using false spot visit. On going through the panchanama dated 27.12.2021 and order passed in the matter bearing 2021/Raste/kavi-997 it is clear that, there is difference in circumstances in the order and panchanama. The statement recorded after the panchanama are of different persons and their false signatures and thumb impressions are done on it. Therefore, it is clear that, the panchanamas prepared are false and those are prepared without visiting spot and are prepared in collusion with each other.

3. Matter filed by defendant No.6 in the office of defendant No.2 with her application is contrary to the situation on the spot. Defendant No.6 has alternative road to approach her agricultural land, through the bandh situated between S.No.22 which is the land belonging to Forest Department. The Forest Department and neighbouring agriculturists have encroached upon the survey number bandh. Therefore, the road of the survey number bandh near S.No.22 had become narrow. Therefore, it is prayed by plaintiffs that, defendants be temporarily restrained from creating new road from survey number bandh situated in between S.No.20

and 21 according to the order passed by defendant No.2 in the matter bearing 2021/Raste/kavi-997 till decision of the suit.

4. Defendant No.5 has filed written statement (Exh.60). Defendant No.5 has admitted that, plaintiffs are owners of S.No.20 and 21 and defendants No.6 and 7 are legal heirs of deceased Rama Shikhre. It is denied by defendant No.5 that, order passed in the matter bearing 2021/Raste/kavi-997 is without issuing notices to plaintiffs No.1 to 11. Defendant No.5 has denied remaining contents of application of plaintiffs. It is denied by defendant No.5 that, Forest Department has made encroachment upon the survey number bandh. Hence, defendant No.5 prayed to reject the application. Defendant No.5 has filed pursis (Exh.62) to consider written statement (Exh.60) as say to the application below Exh.5.

5. Defendant No.6 and 7 have filed their written statement (Exh.46) and have not disputed the fact that, plaintiffs are owners of S.No.20 and 21. Defendant No.6 had made application to get road from survey number bandh. It is further admitted that, defendant No.7 is the adjacent land owner of land of plaintiffs. It is also admitted that, defendant No.6 had filed application to get road from survey number bandh situated in between S.No.20 and 21 and denied all the contents of the application of plaintiffs. It is further submitted by defendnats No.6 and 7 that, if said road is created from survey number bandh situated in between S.no.20 and 21 no loss will be caused to plaintiffs. Therefore, defendants No.6 and 7 alongwith other agriculturist are also having right to use the road from survey number bandh situated in between S.No.20 and 21.

Therefore, defendants No.6 and 7 prayed to reject the application of plaintiffs.

6. Defendants No.1 to 4 have filed their written statement (Exh.54). They have also admitted that, plaintiffs are owners and possessors of S.No.20 and 21 and defendant No.7 is the land owner next to the agricultural land of plaintiffs. They have also admitted that, defendant No.6 has filed application for getting road from survey number bandh. Remaining contents are same of that of defendants No.6 and 7 (Exh.46). Defendants No.1 to 4 have filed pursis (Exh.57) submitting that, their written statement (Exh. 54) be treated their say to the application of plaintiffs (Exh.5). Defendants No.1 to 4 prayed to reject the application of plaintiffs.

7. In view of averments made by plaintiffs and denied by defendant following points arose for my determination along-with my findings thereon are as under:-

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1. Do plaintiffs prove <i>prima-facie</i> case in their favour?	Yes.
2. Do plaintiffs prove balance of convenience in their favour ?	Yes.
3. Do plaintiffs prove that, they will suffer irreparable loss, if temporary injunction is not granted in their favour?	Yes.

**POINTS**

4. What order ?

**FINDINGS**

The application is allowed.

**-: REASONS :-**

8. Plaintiffs have filed copy of order passed by defendant No. at Sr.No.1, copy of roznama at Sr.No.2, copy of panchanama and statement at Sr.No.3, 7/12 extracts of S.No.20 and 21 at S.No.4 and 5, copy of application given by defendant No.6 to defendant No.2 at Sr.No.6, copy of map given to the Tahasildar at Sr.No.7, copy of village map at Sr.No.8, death certificate of Rama Shikhre at St.No.9, copy of death certificate of Shrimant Adsule at Sr.No.10, copy of death certificate of Prabhu Shikre at Sr.No.11, copy of death certificate of Janjumiya Daroge at Sr.No.12 alongwith list Exh.4.

Plaintiffs have also filed notice issued to Vijay Adsule, Kasim Daroge and Walmiki Shikhre at Sr.No.1 to 3 with list Exh.71.

9. Defendants No.6 and 7 have filed affidavit of Dattu Tike at Sr.No.1, affidavit of Bhagwat tike at S.No.2, copy of 7/12 extract of S.No.39 at Sr.No.3, copy of 7/12 extract of S.No.10/10 at Sr.No.4 and photographs at Sr.No.5 with list Exh.69.

10. Heard learned counsels for both the parties. The learned counsel for plaintiffs argued that, defendant No.2 has passed the order on the application filed by defendant No.6 without issuing notices to plaintiffs and without calling them at the time of

panchanama. Panchanama and spot visit done by the officials on behalf of defendant No.2 that is Talati and Circle Officer (Defendants No.3 and 4) are false as they have shown presence of deceased persons at the spot by making their false signatures and thumb impressions on the panchanama. Though they have passed away prior to the panchanama. Hence, the order passed by defendant No.2 cannot be considered to be legal and valid.

11. Defendant No.6 taking help of the illegal order passed by defendant No.2 is trying to make road from the common survey bandh situated in between S.No.20 and 21 by widening the bandh and encroaching upon the lands of plaintiffs. Thus, the learned counsel for plaintiff prayed that, defendants be temporarily restrained from creating road from the common survey number bandh situated in between S.No.20 and 21 till the decision of suit.

12. The learned counsel for defendants argued that, the order passed by defendant No.2 is legal and binding upon plaintiffs. There is no other way for defendant No.6 to approach her agricultural land. On the contrary if the road is prepared from the common survey bandh situated in between S.No.20 and 21 would help plaintiffs also to access their agricultural lands easily. No encroachment would be caused as such, if the road is prepared from the common survey number bandh. Hence, the learned counsel for defendants prayed to reject the application of plaintiffs.

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

13. Perused the record. The death certificate produced on record by plaintiffs at Sr.No.9 to 12 with list alongwith Exh.No.4 reveals that, Keshav Shikhre died on 16.01.2015, Shrimant Adsule died on 16.09.2019, Prabhu Shikhre died on 09.06.2022, Janumiya Shikhre died on 09.04.2021, statement and panchanama produced on record at Sr.No.3 with list Exh.4 reveals that, name of deceased Shrimant Adsule is appearing on the first and second page and his thumb impression is also taken on it. The statement is dated 24.12.2021. According to the death certificate produced on record of Shrimant Adusle it reveals that, he died on 16.09.2019. Therefore, the statement recorded by officials of defendant No.2 *prima-facie* is not reliable. Hence, panchanama dated 27.12.2021 is also doubtful. However, these documents needs to be challenged by plaintiffs by leading proper evidence at the time of trial. However, the statement dated 24.12.2021 of Shrimant Adsule and Vijaykumar Adsule is *prima-facily* is doubtful. Hence, presently balance of convenience goes in favour of plaintiffs. It is likely that, if the road is prepared on the common survey number bandh situated in between S.No.20 and 21 it will cause encroachment on the lands of plaintiffs as their lands are situated on both the sides of survey number bandhs. Thus it will cause loss to plaintiffs which can not be compensated in therms of money. Therefore, I answer points No.1 to 3 in the affirmative.

**AS TO POINT NO.4:-**

14. In view of facts and circumstances discussed in points No.1 to 3 plaintiffs proved *prima-facie* case in their favour. The

balance of convenience goes in favour of plaintiffs. No irreparable loss will be caused to defendants if the application is allowed. Therefore, the application filed by the plaintiffs is liable to be allowed. Thus, in answer to point No. 4, I pass following order:-

**ORDER**

1. The application is allowed.
- 2.. Defendants, their agents, servants and any other persons on their behalf are hereby temporarily restrained from creating road from common survey number bandh in between S.No.20 and 21 situated at Haldurga, Tq. Ausa till further order.
3. No order as to costs.

Date :- 02/08/2024.

(P. I. Mokashi)  
Civil Judge Senior Division,  
Ausa.