

MHND120002232020



ORDER BELOW EXH.07

(Passed on 25th Feb., 2020)

This is an application moved by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure to restrain defendant No.1 from raising construction over Eastern side of 5ft. wide lane. Perused application and say filed thereto. Heard both sides, at length.

2. Contentions of plaintiffs can be summarized as under:

Plaintiffs are the owners of House property over Plot No.48/1, 49 and 50, situated at Mouje Bhokar, Tq. Bhokar, District Nanded. The house of defendant No. 1 is situated towards Eastern side of the house plaintiffs. Now, defendant No.1 is illegally raising construction of his house, without leaving marginal space. He has not even obtained construction permission from local authority. He is encroaching over the 5ft. wide lane (*hereinafter referred as "disputed lane"*) situated between houses of plaintiffs and defendant No. 1. It is causing obstruction to the natural light and air of plaintiffs in their house. Consequently, plaintiffs have filed complaint with local Municipal authority i.e., defendant No.2 and requested them to take necessary action. Consequently, defendant No.2 has issued notice to the defendant No.1 to stop the construction. However, defendant No.1 is continuously raising construction of his house over the disputed lane. Plaintiffs will be deprived of natural light and air,

if, construction of defendant No. 1 is completed. It will cause an irreparable loss to the plaintiffs. Hence, the present application.

3. On receipt of notice, defendants appeared. Defendant No.1 has filed reply (Exh.36). He has resisted the claim of plaintiffs. It is his contention that plaintiffs have also not left marginal spaces while constructing their house. No lane exists, as alleged by plaintiffs. Defendant No.1 is raising construction within the area owned by him. He has duly obtained construction permission from local authority. Therefore, his construction is legal. Consequently, he has urged for rejection of present application.

4. Defendant No.2 has filed its reply (Exh.42) and thereby supported the claim of plaintiffs. It has contended that defendant No.1 had applied for construction permission. However, Plot No.23 stands in the name of one Kamaji Irba. Therefore, defendant No.1 was asked to show his authority to raise construction over Plot No.23. However, defendant No.1 has failed to satisfy the quarry. Consequently, construction permission was not granted. Still, defendant No.1 is raising construction of his house. Hence, it is illegal construction. Therefore, defendant No.2 has also issued notice to stop further construction immediately. Moreover, plot of defendant No.1 falls in Gut No.262, which is a donated property (*Inami land*). Therefore, P.R. card of house of defendant No.1 does not stand in his name. Thus, the construction of defendant No. 1 is illegal. Consequently, defendant No.2 has urged for rejecting present application.

5. In view of the rival contentions, following points arise for

my consideration. Those points are hereinafter produced, alongwith my findings thereon, for the reasons discussed thereunder :

Sr. No.	POINTS	FINDINGS
01.	Whether plaintiffs prove prima-facie case in their favour?	Partly affirmative.
02.	Whether balance of convenience lies in favour of plaintiffs?	Partly affirmative
03.	Whether plaintiffs prove that they shall suffer an irreparable loss, if temporary injunction is not granted in their favour ?	Partly affirmative.
04.	What order?	As per final order.

REASONS

AS TO POINTS NO. 1 TO 3 :-

6. It is contended by plaintiffs that disputed lane exists towards Eastern side of their house. Thereafter, house of defendant No.1 is situated towards Eastern side of disputed lane. Plaintiffs have knocked the doors of Court for the sole reason that the defendant No.1 is raising construction over the disputed lane. On the contrary, defendant No. 1 has flatly denied the existence of disputed lane. Therefore, it is necessary to assess whether the disputed lane really exists or not.

7. In this regard, defendant No.1 has attracted my attention towards tax assessment extracts of house of plaintiffs. He has brought to

my notice, the four boundaries of house of plaintiffs, as mentioned in the tax assessment extracts for the year 2013-14. According to plaintiffs, disputed lane is situated towards eastern side of their house. However, as per four boundaries mentioned in tax assessment extract for the year 2013-14, house of Shri. R.B.Jaju is situated towards Eastern side of their house. Thus, there is no entry in the tax assessment extract which reveals existence of disputed lane towards Eastern side of the house of plaintiffs.

8. Per contra, plaintiffs have produced Abstract Map (*Touch Nakasha*) on record. It reveals existence of disputed lane. Photographs filed on record by the rival parties also shows the lane between house of plaintiffs and defendant No.1. Therefore, prima-facie, plaintiffs have established existence of disputed lane. Non mentioning of disputed lane in the four boundaries, as shown in tax assessment extracts of the house of plaintiffs, does not affect the case of plaintiffs at this juncture. The tax assessment extract are not the proof of four boundaries of any property. Rather, they are the documents created for *fiscal purposes* only. On the contrary, the Abstract Map is the authenticated document, created for the purpose of allocation of particular property. Therefore, prima-facie, more weightage needs to be given to the Abstract Map and photographs on record. On the basis of these two documents, plaintiffs have prima-facie established existence of disputed lane towards Eastern side of their house.

9. It is further contended by the plaintiffs that construction of defendant No.1 is not legal. According to plaintiffs, defendant No.1 has not obtained construction permission from the local Municipal authority. In this regard, plaintiffs have attracted my attention towards the notices

issued by defendant No.2 i.e., Municipal Council, Bhokar to the defendant No.1 on 18.12.2019 and also on 22.01.2020. Defendant No.2 has directed defendant No.1 to stop the construction work immediately. According to these notices, defendant No.1 has not obtained prior permission for the construction of his house. However, defendant No.2 has specifically admitted in its reply that defendant No.1 had applied for construction permission. However, Plot No.23 stands in the name of one Kamaji Irba and not defendant No.1. Therefore, construction permission was not granted.

10. In this regard, copy of application for construction permission is filed on record by the defendant No.2. It discerns that defendant No.1 has sought construction permission on 20.02.2019. He has even filed the payment receipt dated 26.02.2019. Thus, it is prima-facie clear that defendant No.1 had applied for permission of construction. He has also deposited requisite charges therefor. According to Section 45 of the Maharashtra Town Planning Act, 1966, such permission needs to be granted or rejected within 60 days from the date of filing of such application. According to defendant No.2, objection raised by its office in respect of application of defendant No.1 was as to the ownership of Plot No.23. However, defendant No.2 has failed to show any document by which such objection was communicated to the defendant No.1 within period of 60 days. Defendant No.2 has filed copy of letter given to the defendant No.1. Said letter was issued to the defendant No.1 for making query as to his ownership over Plot No.23. However, the acknowledgement of receipt of this letter is of dated 19.12.2019. It means

that the defendant No.2 has failed to communicate any objection to the defendant No.1, till lapse of 10 long months. Therefore, as per Section 45 of the Maharashtra Town Planning Act 1966, deemed permission was granted to the defendant No.1 to raise his construction. No doubt, defendant No.2 ought to have acted more vigilantly and promptly. However, lapses and latches on the part of defendant No.2 to communicate the objection for construction permission shall not affect defendant No.1 adversely. Moreover, defendant No. 1 has filed ration card and aadhar card of his father on record. It prima-facie discerns from those documents that “Kamaji Irba” is grand father of defendant No. 1. Otherwise also, the authority of defendant No.1 to raise construction over Plot No.23 is a question to be decided on the merits of the suits. Prima-facie, defendant No.1 has established that *deemed construction permission* was granted to him. Consequently, he is raising construction. Hence, prima-facie his construction cannot be termed as illegal. Therefore, it is not proper to restrain defendant No.1 absolutely from raising further construction.

11. At the same time, it is necessary to bear in mind that, plaintiffs have made out the prima-facie existence of disputed lane. Photographs on record, prima-facie shows aerial construction of sheds by the defendant No.1, covering disputed lane. It shall certainly cause hurdle to the plaintiffs to enjoy the natural light and air in their house. Therefore, the disputed side i.e. lane of 5ft. width needs to be protected. At the same time regards are necessary to be paid to the fact that defendant No.1 is raising construction legally. Therefore, balance of convenience demands restricting defendant No.1 from raising construction over disputed lane only. Balance of convenience also demands permitting rest of the

construction of defendant No.1, except over the disputed lane. In the wake of above discussion, I answer Point No.1 to 3 partly in affirmative.

AS TO POINT NO.4 :-

12. In view of the above discussion and findings, I answer Point No.4 by passing the following order :

ORDER

1. The application is partly allowed.
2. Defendants No.1 or any other person claiming under him, is temporarily restrained till disposal of present suit, from raising construction, aerial or on earth, over the disputed 5ft. width lane, situated towards the Eastern side of the house of plaintiffs. It is also made clear that defendant No.1 shall be at liberty to raise his further construction, if found necessary, over the rest of the property owned by him.
3. Costs lies in cause.

Date : 25.02.2020

(M. P. Pande)
Civil Judge, Senior Division,
Bhokar.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer	:	Mrs. N. N. Tornekar
Court Name	:	C.J.S.D.,Bhokar
Date	:	25.02.2020
Judgment signed by the		
Presiding officer on	:	27.02.2020
Judgment uploaded on	:	27.02.2020