

MHND220000632022



IN THE COURT OF CIVIL JUDGE (S.D.) AT MUKHED
(Presided Over by- Y. B. Game)

Regular Civil Suit No.70/2022
Purushottam Shivraj Parkanthe & another. **Plaintiffs-**
V/s
Vidyasagar Iranna Jakkalwad & Ors. **-Defendants-**

ORDER BELOW EXH :- 5
(Passed on 03/09/2022)

1] The application, under order 39 rule 1 and 2 read with section 151 Code of Civil Procedure is filed by the plaintiffs prayed for the temporary injunction against the defendant No.01 to 05 to restrain from causing obstruction, interfering in peaceful possession of the plaintiffs over the suit property.

2] The subject matter of the suit property is the agricultural land, plaintiff No.01 is the owner and possessor of the Gat No.402 ad-measuring 10 H 20 R to extent of 03 H, situated at village Eklara Tq. Mukhed, the plaintiff No.02 is the owner and the possessor of Gat No.402 ad-measuring 10 H 20 R to extent of 01 H 99 R situated at Eklara Tq. Mukhed. Plaintiff No.01 is the father of the plaintiff No.02.

The defendants are also occupied the agricultural land at

village Eklara, alleged to situate in vicinity of the land of the suit property.

The defendants No.01 to 05 had approached to defendant No.06, Tahsildar Mukhed, initiated proceeding U/s.05 of the Mamletdar Act 1906, in Vahiwat Dava/application No.1011/2020, contending that the land owner's of Gat No.400, 401, 403 404, 415, 416, 405, 406, 407, 408, 410, 411, 412, 404, 419 and 420 have access road and customary right of way which is passing from suit property for reaching their land. It is stated that the plaintiffs have cultivated the land of suit property and demolish said road therefore prayed to open the road for accessing to the occupiers of the land holders in vicinity. The defendant No.06 has allowed the application by order dated 02/07/2011 and restrained the plaintiffs from obstructing the right of way of the defendants which is passing from the suit property.

3] According to the plaintiffs, they came to know of the order passed by the defendant No.06 on 03/02/2022, when defendants No.01 to 05 tried to interfere in peaceful possession of the plaintiff over the suit property.

4] According to the plaintiff they are the owner and the possessor of the suit property. There is no any road or right of way by custom in the suit property accessing into the land holder bearing Gat No.400 to 420 of village Eklara. It is stated that the there is

Eklara to Ape-Sawargaon boundary road (shiv rasta) at Eastern of the suit property which is adjacent to the agricultural land of defendants No.01 to 06. The Gat No.400 to 420 are situated at village Eklara are adjacent to Eklara to Ape-Sawargaon village boundary road i.e. shiv rasta which is started from Eklara. It is stated that the occupiers and land holder of Gat No.400 to 420 are adjacent to road which is passing from Eklara to Ape-Sawargaon shiv rasta. The defendants No.01 to 05 are using said shiv rasta for reaching their field, the said shiv rasta is existed since long time and it is also mentioned in revenue record i.e. village map and other record of the Taluka Inspector of Land Record.

5] It is stated that the though the shiv rasta is already existed, the defendants No.01 to 05 are interfering in possession of the plaintiffs over the suit property under pretext of the way. It is further stated that the defendant No.06 is colluded with the defendants No.01 to 05 and passed the order to restrain the plaintiffs from interfering with the right of way of the defendants in suit property is null and void. Therefore the suit is filed for perpetual injunction to restrain the defendants from passing or using way in the suit property and thereby further restrained from interfering in possession of the plaintiffs over the suit property.

6] The present application is filed for temporary injunction against the defendants No.01 to 05 to restrain them from

obstructing the peaceful possession of the plaintiffs over the suit property on pretext of the order pass by the defendant No.06, during pendency of the suit.

7] The defendants No. 01 to 05 have filed say vide Exh.15 stated that the there is right of way based on custom passing from the suit property, the land occupier of Gat No.400 to 420 and adjacent there to have been used this road since imemorable time for reaching their field from village Eklara. The plaintiffs used force and stopped the access of the said road passing. Therefore, the defendant No.01 filed an application dated 27/07/2020 to defendant No.06 the Tahsildar Mukhed in proceeding No.1011/2020, the inquiry was conducted, spot visit and spot panchanama were prepared, persons in vicinity used the road passing from suit property have stated of the existing the road by custom since long period. Thereafter defendant No.06, on the basis of inquiry is held that the existed road passing from the suit property was obstructed by the plaintiffs, villagers and occupiers of the land in vicinity are entitled to use this customary road. It is denied that the there is any alternate road towards the east of the suit property adjacent to the agricultural land of the defendants No.01 to 06 i.e. the Eklara to Ape-Sawargaon Shiv road used by the defendants for reaching to their bank. It is stated that the defendant No.06 by order dated 02/07/2021 restrained the plaintiffs from creating hurdle in right of way of the defendants over the suit property, the plaintiffs

obstructed the said order therefore the defendant No.01 has lodged report to the police, on that basis the complaint is filed on 11/12/2021 and registered as Non-cognizable Report case with Mukhed Police Station. It is stated that there is right of way by custom of passing from the suit property used by the adjacent owners and land holders in vicinity, the plaintiffs have obstructed the said right of way, the order passed by the defendant No.06 against the plaintiffs by restrain him from disturbing the right of way of defendants over the suit property therefore the relief of the injunction prayed in the suit is not tenable and the plaintiffs are also not entitled to get the temporary injunction as prayed for.

8] The defendant No.06 has also filed the say vide Exh.14 stated that the proceeding initiated under the Mamletdar Court Act on the basis of the complaint of obstructing the right of way passing from the suit property filed by the occupier of Gat No.400 to 419. On 18/03/2021 the spot was examined, it was revealed that the customary road existed in suit property has been obstructed by the plaintiffs thereby right of occupier of reaching their field has been obstructed therefore the order has been passed U/s.05 of the Mamletdar Court against the plaintiffs directing them not to obstruct right of way of adjacent land holder passing from the suit property.

9] The following points arise for my determination. I have recorded my findings for the reasons given below :

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiffs have made out a prima facie case ?	In the Affirmative.
2	Whether the balance of convenience lies in favour of the plaintiffs ?	In the Affirmative.
3	Whether the plaintiffs would suffer an irreparable loss if temporary is refused ?	In the Affirmative.
4	What order ?	As per final order.

REASONS

10] Heard both side perused the application and say filed. Also perused the documents produced by the parties.

As to points No.1, 2 and 3

11] The learned advocate of the plaintiffs has produced on record the several document included the 7/12 extracts of the suit property and landed properties owned by the defendants, the Copy of the village map and Copy of Nakkal Nakasha of Gat No.402 i.e. suit property issued by the Deputy Superintendent of land record of Mukhed.

On the other hand learned advocate of the defendants is produced of record documents below list at Exh.17 included the application dated 27/07/2020 to defendant No.06 to remove the obstructed way, the Copy of the order dated 02/07/2021, in Vahiwat Dava/application No.1011/2020 passed by defendant No.06, Copy of complaint dated 21/09/2021 to the Mukhed Police

Station, the Copy of spot panchanama and statement of the adjacent land holder recorded during inquiry by the defendant No.06.

12] The learned advocate for the plaintiffs is argued that the plaintiffs are owner and possessor of the suit property. There is no customary road existed which is passing from the suit property and used by the defendants and other adjacent land holders in vicinity for reaching their field. The plaintiffs is relied on the documents the produced before court i.e. the village map and the Copy of Nakkal Nakasha of Gat No.402.

13] It is further submitted that the defendants and the other adjacent land holders i.e. occupiers of Gat No.400 to 420 have the road, access-able to reach their field passing towards the East of the suit property and which is adjacent to the lands of the defendants No.01 to 05 known as Eklara to Ape-Sawargaon shiv road shown in the village map produced before the court. It is further submitted that the there is no reference in 7/12 extracts of the suit property that road has been passing from the said property. It is emphasized that the defendants and adjacent holders can use the Eklara to Ape Savargao shiv rasta which is existed one as per the village map and has been actually used one. Therefore it is submitted that the act of defendants from interfering the peaceful possession of the plaintiffs over the suit property on pretext of order passed by the defendant No.06 right of customary way or road in suit property is prima-faice

not seen to exist, as per the documents i.e. the Village map, Nakkal nakasha of suit property and 7/12 extracts produced by the plaintiffs.

As regards the maintainability of the suit during existence of the order passed by the Mamletdar, U/s.05 of the Mamletdar Court Act 1906, it is argued that the civil suit is maintainable for the perpetual injunction for protecting the possessory right. Plaintiffs are relied on the judgment of the Hon'ble Bombay High Court in ***Uddhav Madahvarrao @ Mahadu Solanki Vs. Rammappa Dagadappa Jatole reported in lodged (Bombay) 2008 (8) 491***. It is held that the party who is being aggrieved by the order of Mamletdar passed U/s.05 of Mamletdar Court Act 1906, can file suit before competent civil court claiming declaration and perpetual injunction.

14] The present suit is filed for perpetual injunction, in view of ratio laid down by the Hon'ble High Court in aforesaid citation, this court has jurisdiction to entertain the suit, though the suit is involved to adjudicate being aggrieved by the order passed by defendant No.06 under the Mamletdar Court Act 1906.

15] On other hand learned advocate for the defendants vehemently submitted that the plaintiffs have obstructed customary way of the defendants and adjacent occupiers of land holders passing from the suit property, the act of plaintiffs stopped the

access of defendants in suit property was unlawfully, therefore the defendant No.06 in proceeding No.1011/2020 in proceeding U/s.05 of the Mamletdar Court Act 1906 held inquiry, visited spot, recorded the statement of witnesses on that basis held the right of way by custom in suit property in favour of defendants and adjacent land occupiers. It is further stated that the defendants and adjacent land holder will cause irreparable loss in case temporary injunction prayed by plaintiffs to restrain the defendants from passing of the road is granted.

16] The plaintiffs submission that there is alternate road available to defendants and rest of the land occupiers of Gat No.400 to 420 of village Eklara, passing east of the suit property and adjacent of the lands of the defendants No.01 to 05 is supported by Copy of the village map and Copy of the Nakkal nakahsa of Gat No.402 produced below list of document at Exh.13. There is no prima-facie evidence except the statement of the defendants and others land occupier recorded by defendant No.06 in inquiry, to show that the customary road is passing from the suit property.

17] At this juncture, on the basis documents produced before the court it is prima-facie seen that the plaintiffs owned and possessed the suit property. The so called right of customary way stated to have passing from the suit property has not prima-facie seen to be existed from the documents on record. More so, the

village map produced by the plaintiffs below the list of document at Exh.13 has shown that the defendants and adjacent land holders could use the Eklara to Ape-Sawargaon shiv road passing from east of the suit property adjacent to the land of the defendants. I, therefore, held that the plaintiffs have made out the prima-facie case, balance of convenience is also lies in favour of the plaintiffs. The plaintiffs are entitled to get protected their peaceful possessory right in the suit property, they will cause irreparable loss if the temporary injunction is refused, on other hand the defendants will not cause any loss by granting the temporary injunction because there is road i.e. Eklara to Ape-Sawargaon access-able to their field. Hence I answer the points No. 01 to 03 in Affirmative.

As to Point No.04

18] On taking into consideration the finding recorded for points No.01 to 03, in order to record findings to this point. Hence I pass the following order.

O R D E R.

1] The application is allowed.

2] The defendants No.01 to 05, their agent or any other persons claiming on their behalf are hereby restrained by temporary injunction from interfering or making any sort of obstruction in the peaceful possession of the plaintiffs over the suit property No.402 to extent of ad-measuring 03 H of plaintiff No.01 and extent of ad-measuring 01 H 99 R of the plaintiff No.02.

Place : Mukhed
Date : 03/09/2022

(Y. B. Game)
Civil Judge, Senior Division,
Mukhed.

CERTIFICATE

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

Name of the Stenographer		Wadje B.M.
Court Name		Civil Judge, Senior Division, Mukhed
Date:		03/09/2022
Judgment signed by the Presiding Officer On		03/09/2022
Judgment uploaded on		05/09/2022