

R.C.S. No.67/2018
Madhav -vs- Rajendra

ORDER BELOW EXH.05

This is an application by the plaintiff for grant of temporary injunction, restraining the defendant under Order- 39, Rule- 1 & 2 of the Code of Civil Procedure (In short the C.P.C).

2] **Plaintiffs case in brief is as under:**

That the plaintiff is owner of the field property Gat No. 380. The defendant is owner and in possession of field property Gat No.384/2 situated at mouza Titur, Tq. Kuhi, Dist. Nagpur. (Hereinafter referred to as the suit property). The gut no. 380 and gut no.384/2 adjacent to each other. That the gat No.384 is touching towards western side of pandhan which is running north-south. Therefore, ancestors of the plaintiff and defendant were using said pandhan to come agricultural land of the plaintiff from the northern side of Gat 384.

3] That since beginning the way of 20 feet in width was in existence from the northern side of agricultural land Gat No.384. However,

defendant time to time cultivated the said way and in present the width of said way is 10 feet which is shown in the plaint map. The plaintiff using suit way more than 50 years. Therefore, he is having easement right on the said way to go to his agricultural land. The plaintiff has no alternate way to go his agricultural land Gat No.380. The defendant since last 2 years started cultivation of dhura and reduced the width of way.

4] In the year 2017 he kept thorny bushes on the suit way with intention of create hurdle on the way from carrying tractor or bullock cart. Therefore, the plaintiff lodged complaint to the Tahsildar, Kuhi and requested him to remove the hurdle, which is created by defendant. Accordingly, notice was issued to the defendant and spot panchanama was conducted on 16.11.2017. During panchanama, the defendant admitted existence of the way. That time he also agreed that he will not create obstacle. Again on 5.6.2018 before Talathi defendant agreed that he will not obstruct the way of the plaintiff. On the basis of both panchanamas, Ld. Tahsildar restrained the defendant by order dated 30.01.2018.

5] In spite of said order, defendant started obstruction. Therefore, he has issued legal notice to the defendant on 26.06.2018. But the defendant not replied the notice. That plaintiff is using the suit way since the time of his ancestors. Therefore, he is having easment right. Therefore, plaintiff has having prima-facie case and balance of convenience is also in his favour. If defendant is not restrained the plaintiff cause irreparable loss. Hence, the plaintiff filed this suit for mandatory injunction along with this for temporary injunction application.

6] Defendant appeared and strongly opposed the application by filing his reply at Exh.11. The defendant denied the case of the plaintiff and in his specific reply he contended that the plaintiff is Landlord and he is poor person. He owned and possessed Gat No.384/2 area 1.19 H.R. That his entire family depending upon the income of suit land. If the way allotted to the applicant from his field up down from north south dhura he will loss near about half acre land. That there is shivdhura is in existence adjacent to the field of applicant Gat No.380 from the eastern side. Said shivdhura divides

the boundaries of village Titur and Dhanoli. The shivdhura is adjacent to the Gat No.380 which is 50 feet. Therefore, the plaintiff can easily enter in his field either by bullock cart or tractor. In such circumstances, the plaintiff has no locus-standee to file this application.

7] That he is illiterate person, that the plaintiff is rich person. Therefore, with the collusion of revenue authority he got prepared revenue record in his favour. That the defendant kept the option open before the applicant that if applicant will return the land to him from his field Gat No.380 in the eastern side. Therefore, he will lose the land from the north-south way. That the plaintiff has no prima-facie case, balance of convenience not in his favour, if this application is allowed he will cause irreparable loss which cannot be compensated in terms of money. Hence, he prayed to reject this application.

8] The following points arise for my consideration. I have decided them along with reasons as under.

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1}	Whether the plaintiff has made out prima-facie case?	Yes.
2}	Whether the balance of Convenience lies in favour of the plaintiff ?	Yes.
3}	Does the plaintiff further prove that he will be put to irreparable loss in case injunction is refused ?	Yes.
4}	What order ?	As per final order.

REASONS

9] To support their respective contention parties have filed on record certain documents which will be referred at the relevant point of time.

As to point no 1 to 3 :

10] As all these points are inter-linked with each other, Hence, discussed them simultaneously.

11] Heard Ld. Advocate Shri Likhite appearing for the plaintiff, he submitted that from the Gat No.384/2 there is pandhan road to approach the field of plaintiff. The defendant is restraining the way of the plaintiff. Therefore, it is necessary to restrain the

defendant. The plaintiff has prima-facie case, balance of convenience lies in his favour. Hence, he prayed to allow this application. On the other hand, Ld. Advocate Shri Bansod appearing for defendant submitted that the plaintiff has no concern with the suit field Gat No.384/2. There is no way from the Gat No.384/2. Therefore, plaintiff has no locus standi to file this application. The plaintiff has no prima-facie case. Therefore, he prayed to reject this application.

12] The person, who seeks the aid of the Court in that behalf must, as a rule be able to satisfy the Court on three points: A] That there is a serious question to be tried at the hearing and there is a probability that he will be entitled to the relief sought by him or in other words that he has a prima-facie case to go to the trial. B] That the Courts interference is necessary to protect him from that space of injury which the Court calls irreparable loss before his legal rights can be established on trial and C] That the comparative mischief or inconvenience which is likely to be arisen from withholding the injunction will be greater than that which is likely to be arise from granting

it.

13] In the light of submissions of both sides and above legal position, I have gone through the entire record. From the record, it is admitted position that the plaintiff is owner of the Gat No.380 and the defendant is owner of Gat No.384/2. Both fields are adjacent to each other. The plaintiff came with the case that to approach his field there is way from Gat No.384/2 which is owned by defendant. The defendant cultivated said way and narrow the width of road which was 20 feet.

14] It is the contention of defendant that the plaintiff has alternate shivdhura to approach his field. Therefore, the plaintiff cannot claim way from Gat No.384/2. The plaintiff has filed on record the spot inspection report which is prepared by Circle Inspector. Said inspection report clearly indicate that there is way from the Gat No.384/2 to approach the field Gat No.380. That same is admitted by the defendant before revenue officer and panch witnesses. The panchanama is prepared in presence of defendant. He signed on the said panchanama.

15] That thereafter, again on 05.06.2018 concern revenue Officer prepared spot panchanama, in which he clearly shows that there is way which is in existence from Gat No.384/2. The defendant obstructed said way. The defendant claiming that there is alternate shiv dhura to approach to the field of plaintiff. However, defendant has not filed on record any document to show that there is alternate way to the plaintiff to approach his field. The toch map which is submitted by the plaintiff clearly indicates that there is way from the Gat No.384/2.

16] That the plaintiff also filed on record the Order of Tahsildar dated 30.1.2018. The concern Mamlatdar Court after detailed inquiry restrained the defendant from obstructing the way of plaintiff by his judgment. That prima-facie there is no material on record to differ with the order of Mamlatdar Court. Whether there is 10 feet way or it is 20 feet or not, whether the plaintiff has alternate way to approach his field or not would all be the issues which can be decided only after the parties adduce their evidence. It would be premature at this stage to

give findings on the said issues.

17] The plaintiff submitted that in his field there is sugarcane, that due to the obstruction of the defendant he is unable to transport it from his field. Therefore, if temporary injunction is not granted the plaintiff would suffer irreparable loss. On perusal of entire pleading of parties, to the extent of this interim application, I come to the conclusion that the plaintiff has made out prima-facie case, the balance of convenience is in favour of the plaintiff. If injunction is not granted, irreparable loss would cause to the plaintiff. Hence, I answer point No.1 to 3, in the affirmative.

As to Point No. 4.

18] It is clear from above discussion that the plaintiff has established all the ingredients necessary to grant interim injunction in his favour. Resultantly, he is entitled for the same and his application deserves to be allowed. Hence, in answer to point No. 4, I pass the following order:

ORDER

1. The application (Exh. 5) is hereby allowed.
2. The defendant himself, his agent, servants and anybody on his behalf are hereby temporarily restrained from causing obstruction on the way (Road) to the plaintiff till disposal of suit.
3. Costs in cause.

Date :- 03.11 2018.

(**D.B. Gutte**)
Civil Judge, Jr.Dn.,
Kuhi.

CERTIFICATE

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

Name of Stenographer : Pravin T. Mandale

Endorsement

Case argued on	:	17.10.2018
Order dictated on	:	03.11.2018
Transcription ready on	:	03.11.2018
Order checked and signed on	:	03.11.2018

DISTRICT COURT
NAGPUR