

RCS No.61/2023
Nalini Pagare and Ors V/s. Maruti Pagare
and Ors.
MHNS230007612023

ORDER BELOW EXH.05

Read application. Perused plaint and documents filed along with it. Heard learned counsel for the plaintiff. The plaintiff has come with the case that the suit property i.e. house property bearing no.343 is owned by plaintiffs. Towards, southern side of the house there is door and thereafter there is open land of plaintiffs. Further, there is Samaj Mandir near open land of plaintiffs. Plaintiffs use the open land as court yard as well as people use the open land as road to approach Samaj Mandir and the main road of the village. However, the defendant no.1 to 3 have started construction in front of southern door of the plaintiffs. Therefore, the ventilation of the house of plaintiffs is blocked. Further, the defendant nos.01 to 03 have started construction by leaving only 1 feet land between the house of plaintiffs and their wall. Therefore, plaintiffs have approached the defendant no.04 and Sarpanch of village on 06.04.2023 and 10.04.2023 and requested them to take action against defendant nos.1 to 3. Therefore, the grampanchayat has given to the defendant nos.1 and 2 on 10.04.2023 to stop their construction. However, defendant nos.1 to 3 have not paid heed. As the defendant no.2 is the member of grampanchayat, the grampanchayat has not taken any action against the defendant no.1 to 03. In case defendant no.1 to 3 have completed the construction, the plaintiffs would have no access from the southern side door as well as their ventilation would be blocked. The defendant nos.01 to 3 are making construction in the land owned by plaintiffs. The construction is going on day by day in speed. Therefore, plaintiffs are constrained to

institute suit against defendants. In support of their contention, plaintiffs have filed the assessment extract which shows the suit house property was constructed in 1989 and is in name of father and mother of plaintiffs. Further, it appears that plaintiffs have given notice to the Gramsevak and Sarpanch for taking action against defendant nos.01 to 03. Further, it appears that Gramsevak and Sarpanch has given notice to the defendant nos.01 and 02, wherein they have contended that due to construction made by defendant nos.1 and 2, there is possibility of closing public way. Further they have not taken prior permission before starting construction. They have directed the defendant no.01 and 02 to produce necessary document and stop construction within 24 hours. Plaintiffs have also filed photographs of position on the spot. The photographs shows that the defendant nos.1 to 3 have started construction near to the house of plaintiffs as well as it is attached to Samaj Mandir building. Further, it appears that due to construction of wall in front of plaintiffs southern door there is possibility that the ventilation of house of plaintiffs would be blocked. It appears that the plaintiffs have right in the suit property. In case if the defendants would complete construction, the right of plaintiffs would be affected. Further, it appears that there is possibility of closing public way. In such circumstances, it would be proper to direct the defendant to stop further construction. No prejudice would cause to the defendants. On the contrary, delay in passing injunction order may defeat the very purpose of granting injunction. Hence, I pass the following order.

ORDER

1. Issue ad-interim injunction restraining defendants from making further construction till appearance of the defendants.

2. Issue show cause notice to the defendants as to why the temporary injunction shall not be granted in favour of the plaintiffs as prayed.
3. Plaintiff to comply Order 39 Rule 3 of The Code of Civil Procedure.
4. Plaintiffs are directed to file photographs of recent position on the spot.
5. Emergent Process and Special Bailiff allowed.

Dated: 18.04.2023

(M. M. Alone)
Civil Judge (Jr.Dn.)
Igatpuri