



REG. CIVIL SUIT NO.63/2020
HARSHIL & OTHERS V/s LALITA & ANOTHERS
CNR NO. MHNS230014182020

ORDER BELOW EXH.05

(16.12.2020)

In a suit for declaration and injunction, the plaintiffs by way of this application seek to restrain defendants No.01 & 02 temporarily from raising construction on the suit way.

02 An old Bombay Agra Main Road passes through village Titoli, Tq.Igatpuri, Dist.Nashik. The land in block no.76 is situated along-with this road from northern side. Thereafter, the lands in block no. 75 and 81 are also situated. To approach lands in block no. 75 & 81, a south north 09 mtr wide road starting from the old Bombay Agra Main Road is sanctioned by the authorities. This road is the 'Suit Way' for the purpose of this application.

Necessary Pleading for the Decision of the Application is :

03 The plaint reports that the layout of block no.75 and 81 is approved by the Town Planning Authority, Nashik on 26.11.1985 and accordingly the nature of the lands therein got converted into non-agricultural one. The plaintiffs' are the owners of different plots situated in block no.75, 81 and 83. The buildings called 'Ashirwad Apartment' and 'Saidarshan Apartment' have been constructed by plaintiffs' no.01,02 and 04 on their plots after obtaining necessary permissions from the concerned authorities. For ingress and egress to the properties of plaintiffs', the suit way is sanctioned by the

authorities. Defendants' no.01 and 02 are the owners of 02 R land out of block no.76 which is situated along-with the old Bombay Agra Main Road. They have encroached the said suit way and raised south north construction admeasuring 500 Sq.ft. Their construction is still in progress without paying any heed to the objections raised by plaintiffs. Hence, this suit and application.

04 Defendants no.01 and 02 have filed their say to this application vide Exh.29. They have denied all the contents of plaint and this application. According to them, they are the owners of 02 R land out of block no.76. In 2014, the measurement of their land was carried out and at that time plaintiffs did not raise any objection. In 2015, defendants no.01 and 02 have completed the construction after obtaining permission from Village Panchayat. By this time, they have started some construction towards northern side in their land only. They have not encroached the suit way and in fact there is no suit way as pleaded by the plaintiffs. With this pleading, they have prayed for rejection of the application.

05 Defendant no.03 has also resisted this application by filing written statement cum say vide Exh.38. According to him, plaintiffs no.01 to 03 have not completed the construction as sanctioned by the Town Planning Authorities. They themselves have encroached on the suit way by digging a bore-well thereon. They have not filed any map prepared by the office of Taluka Inspector of Lands Record (TILR). It is also pleaded that the plaintiffs have obtained false certificates from Village Panchayat. People residing in Ashirwad and Saidarshan apartments are using the land of defendant no.03 for ingress and egress and in that connection defendant no.03 has already made complaints to Village Panchayat vide applications

dated 18.06.2018 and 08.08.2019. However, none paid attention. Hence, he also prayed for rejection of the application.

06 Perused the record. Heard Mr. J. N. Shinde the learned advocate for the applicant and Mr. S. S. Rike and Mr. O. V. Bharindwal the learned advocates for defendants no.01 and 02. Also, heard Mr. A. B. Pagare the learned advocate for defendant no.03. The points which arise for my determination along with the findings and reasons are as follows :

No	POINTS	FINDINGS
01	Whether the plaintiffs' have made out a <i>prima facie</i> case in their favour ?	Yes
02	Whether balance of convenience lies in granting the injunction ?	Yes
03	Who will suffer irreparable loss if the temporary injunction is not granted ?	The Plaintiffs' Would Suffer
04	What order ?	Application is Allowed

DOCUMENTS

07 To support the contentions, the plaintiffs have filed mutations, layout, sale deeds, 7/12 extracts, completion certificates of apartments, photographs and applications filed to Village Panchayat, Igatpuri police station etc. To counter, defendants no.01 and 02 have also filed 7/12 extracts, measurement map of block no.76, construction permission of Village Panchayat, tax assessment receipt, electricity bill and photographs. Defendant no.03 has also relied on photographs, complaints given to Village Panchayat, Tahsil office and MSEB office.

SUBMISSIONS

08 The plaintiffs have submitted that the 7/12 extract of block no.76 shows that it is an agricultural land. Therefore, the very purchase of 02 R agricultural land by defendants' no.01 and 02 is against the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The exact location of their 02 R land in the entire block no.76 is beyond identification. Its boundaries are uncertain. The construction permission filed by defendants' no.01 and 02 pertains to 2015. To the contrary, the plaintiffs' have come to the court with all clear titles. To counter, defendants' no.01 and 02 have submitted that the plaintiffs' did not raise any objection in 2015 when defendants' no.01 and 02 had raised some construction on the same site. For declaration of easementary right, the plaintiffs' have not made any pleading. The complaint against the construction of defendants no. 01 and 02 is not made by any flat owner residing in 'Ashirwad' and 'Saidarshan' Apartment. Hence, the plaintiffs' have no locus to institute this suit. Defendant no.03 as well, made submission in the same lines.

REASONS

AS TO POINT NO.1 (PRIMA FACIE CASE):-

09 The term *prima facie* case means a case which involves a fair and substantial question to be tried. If there is no apparent defect in the plaintiff's case leading to its failure at this stage, it is in the ambit of the expression *prima facie* case. A *prima facie* case does not mean a case proved in its entirety but a case which can be said to be established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression *prima*

facie case.

10 The documents on record establish that the lands in block no.75 and 81 are converted for non-agricultural use by the order of District Collector, Nashik dated 13.03.1986. The presence of such order itself indicates that there is a layout approved by a Town Planning Authority without which the Collector would not have passed such order. Even otherwise, the sale-deeds filed by the plaintiffs are appended with the approved layout of blocks no.75 and 81. It clearly shows that 09 metre wide road starting from the old Bombay-Agra Main Road is sanctioned by the authorities. This road goes directly to plot no.02 on which plaintiffs' no.01 and 02 have constructed "Ashirwad" apartment. In other words it can be said that the suit way is adjacent to the "Ashirwad" apartment. The record also shows a completion certificate of "Ashirwad" apartment issued by Village Panchayat Titoli. It mentions that plaintiffs' no.01 and 02 have completed construction as per the approved plan. Therefore, had plaintiffs' no.01 and 02 themselves encroached the suit way, the Village Panchayat would not have issued completion certificate in their favour. The presence of the completion certificate in favour of plaintiffs' no.01 and 02 also makes it clear that there has to be a 09 metre wide road present right in front of "Ashirwad" apartment. Going by the documents, this road should be a straight road starting from the old Bombay-Agra Main Road towards the northern side. However, the photographs filed by plaintiffs and even by defendants are evident that the construction is raised on the road situated in front of at "Ashirwad" apartment. This apart, the maps filed by defendants' no.01 and 02 evinces that blocks no.76 and 81 are situated parallel to each other. If it is so, no construction in block

no.76 should come in a way going to block no.81. There has to be a straight road passing along-with block no.76 till 81. However, the record *prima facie* shows that the way going to block no.81 is obstructed by raising construction on block no.76.

11 It is submitted by the learned advocate for defendants no.01 and 02 that plaintiffs' no.01 to 04 have no locus to institute the suit in hand as they had raised apartments on their plots and the flats owners are residing therein. Therefore, according to defendants' flat owners were aggrieved persons if at all the construction is made on the suit way. It is indeed true that the plaint itself shows that flat owners are residing in "Ashirwad" and "Saidarshan" apartments. However, the documents would still show plaintiffs no.01 to 04 as the owners of the plot no.02 and 04. Therefore, it cannot be said that they are not aggrieved by the actions defendants no.01 and 02. Even otherwise, this court finds that the objection as to *locus* is scanty to discard the present suit and application at this stage. The defendants' have relied on some judgments including the judgment of Hon'ble Appex Court in *Dalpat Kumar and Anr. V/s. Prahlad Singh and Ors., AIR 1993 SC 276*, wherein it is held that for grant of temporary injunction *prima facie* case must exists and not the *prima facie* title. Further, the judgment of Hon'ble High Court of Bombay in *Vassudev Nene V/s. Shri Dattatraya Raghunath Jog, 999 CJ (Bom) 882* is also pressed into service wherein it is observed that the parties seeking discretionary relief must approach the court which clean hands and should not suppress any material fact or document.

12 As observed herein-above, the plaintiffs have established encroachment on the suit way. To the contrary, defendants no.01 and

02 do not have any document authorising construction in block no.76. In fact, block no.76 is the agricultural land as per record. Therefore, the present suit involves a fair and substantial question in regard to encroachment by defendants' no.01 and 02 which can be conclusively observed upon trial only. At this stage, there is no defect in the suit leading to its failure today. Plaintiffs' appear to be in clear title of their properties and the suit way is also approved by the concern authorities to reach their properties. To the contrary, there is no case in favour of defendants no.01 and 02. Therefore, this court is of the opinion that *prima facie* case is made out in favour of plaintiffs. With all respect to the citation filed by defendants, this court wants to observe that they are not applicable to the case in hand in view of the distinguished facts and circumstances observed hereinbefore. Therefore, the point no.01 is answered in the affirmative.

AS TO POINT NO.02 & 03 : (Balance of convenience and irreparable loss)

13 The balance of convenience is nothing but balancing the right of the parties. In the suit in hand the title of the plaintiffs' is clear and they also have the suit way approved in their favour for ingress and egress to their properties. By this time, defendants no.01 and 02 do not have any right to encroach on this suit way and obstruct the plaintiffs way of ingress and egress. Therefore, it is reasonable and convenient to protect the suit way till the decision of the present suit. The term irreparable loss does not mean the monetary loss only. It includes the legal loss as well. It is true that defendants' no.01 and 02 have raised construction and if the same is

stopped they would suffer some monetary loss. However, such loss cannot be equated with the legal loss which would cause to the plaintiffs if the temporary injunction is not granted. The plaintiffs may have no way to approach their properties if the construction on the suit way is not stopped. Therefore, if the temporary injunction is not granted, it is vivid that an irreparable loss may be caused to the plaintiffs'. In this view of the matter, I am of the opinion that the balance lies in granting the injunction and the irreparable loss as well would cause to plaintiffs if the injunction is not granted. Hence, points no.02 and 03 are answered accordingly and in answered point no.04 following order is passed.

ORDER

1. Application Exh.05 is allowed.
2. Defendant nos.01 and 02 and anybody claiming through them are hereby restrained till the conclusion of this suit from raising illegal and unauthorized construction on the suit way.
3. Cost in main cause.

Date :-16.12.2020

(P. P. Giri)
Civil Judge Jr. Dn.,
Igatpuri