



R.C.S.No. 08/2019

Ashok Zanjale &amp; Ors.

Vs

Dattoba Kudale &amp; Ors.

CNR-MHPU090003322019

**ORDER PASSED BELOW APPLICATION (EXH. NO. 05)**

Plaintiffs have filed an application under Order 39 Rule 1 of the Code of Civil Procedure restraining defendants from causing the obstruction on the southern side of suit properties.

2. In view of pleading of both parties and documents filed on record. Following points arises for my determination and I have recorded my findings with the reasons thereon :

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether plaintiffs have prima facie case?	Yes
2	Whether the balance of convenience in favour of plaintiffs?	Yes
3	If the temporary injunction could not be granted they will suffer irreparable loss?	Yes
4	What order ?	As per final order.

### Reasons for the findings

#### Point no.1 to 3.

3. It is the case of plaintiffs that plaintiff No. 1 owned and possessed room No. 1 admeasuring 24 x 19 sq.ft. along with double room upon it situated at S.No. 228/4/2 of Pimpri Chinchwad Municipal Corporation, Dist. Pune (hereinafter referred as suit property No. 1A). Plaintiff No. 2 owned and possessed admeasuring 230 sq.ft. situated at S.No. 228 of Pimpri Waghere within jurisdiction Pimpri Chinchwad Municipal Corporation, Dist. Pune (hereinafter referred as suit property No. 1B). Plaintiff No. 3 owned and possessed admeasuring 300 sq.ft. situated at S.No. 228/4/2(City Survey No.1229/8) of Pimpri Waghere within jurisdiction Pimpri Chinchwad Municipal Corporation, Dist. Pune (hereinafter referred as suit property No. 1C). Plaintiff No. 4 owned and possessed admeasuring 336 sq.ft. situated at S.No. 228/4/2/2 of Pimpri Waghere within jurisdiction Pimpri Chinchwad Municipal Corporation, Dist. Pune (hereinafter referred as suit property No. 1D). Plaintiff No. 7 owned and possessed admeasuring 350 sq.ft. situated at S.No. 228 (CTS No.1218) of Pimpri Waghere within jurisdiction Pimpri Chinchwad Municipal Corporation, Dist. Pune (hereinafter referred as suit property No. 1E).The said suit properties being in the name Gaikwad Chawal. The suit properties originally owned by Kudale family. Kudale family sold suit properties to Gaikwad family.

4. Defendant No. 1 to 8 are residing in the suit properties along with other tenant. Plaintiffs and defendants have southern side entrance to reach their respective house. They are using the said entrance from decades. This is only way to approach their house. Defendants have blocked southern side road by constructing a wall. But in the year 2016 Pimpri Chinchwad Municipal Corporation have demolished the said wall. Thereafter, again in the year 2018 defendants have placed wastage in the southern entrance and blocked the way. On 08/06/2018 plaintiffs have lodged the report at police station Pimpri. On 28/06/2018 they have also approached to Pimpri Chinchwad Municipal Corporation. Thereafter, on 04/09/2018 they have raised the grievance to the Commissioner of Police, Pimpri Chinchwad.

5. Per contra defendants have filed their reply ( Exh. 33). According to them, at the time of execution of sale deed in favour of defendants. It has been specifically mentioned in the sale deed that defendants having 2 feet road on the eastern side. Since beginning trees grown in their courtyard. They are also having cow yard. There was no way on the southern side of the suit properties. On 03/03/2018 defendants have measured the S.No. 228/4/1. Therefore, prayed for rejection of this application.

6. Plaintiffs have relied on the copy of partition deed dated 04/02/1971. In the said partition deed it has been shown that S.No. 228 belongs to Kudale family. After the partition it has been distributed amongst them. In the said partition deed it has been mentioned that S.No. 228/4 admeasuring 1210 Sq.ft. on the north-south side having 8 foot road. The property came in the share of Shankar Dhondiba Kudale and Smt. Anusaya @ Housabai Shankar Kudale also reflected the public road on the southern side.

7. The measurement map also reflected the way on the southern side of the suit properties. The said right of way was in existence since 1971 and even after the rights acquired by plaintiffs. Therefore, in the year 2016 plaintiffs have approached to the office of Pimpri Chinchwad Municipal Corporation and raised the grievance that defendants have constructed the wall and obstructed their way on the southern side of the suit properties. Accordingly, the authority have demolished the said wall. But again in the year 2018 defendants have caused the obstruction. Therefore, plaintiffs have prima-facie case that in spite of way on the southern side defendants causing obstruction.

8. It is contended by defendants that plaintiffs having east and southern road to approach their house. But the map shows that plaintiffs having southern north side road to approach their house. On the eastern side and back side of the

suit properties there is no way. In such situation, the contention of defendants does not appear to be just and proper that plaintiffs having another way to approach the suit properties.

9. Plaintiffs have come with the specific case that on 04/09/2018 and 08/06/2018 lodged the complaint to the Commissioner of Police, Pimpri Chinchwad and police station Pimpri respectively. Thereafter, on 28/06/2018 they have raised grievance to the Commissioner of Pimpri Chinchwad Municipal Corporation. Therefore, it appears that defendants causing the obstruction of their way on the southern sides of the suit properties. Plaintiffs right of way can't be obstructed when no other option remains to approach the suit properties. Hence, plaintiffs will suffer irreparable loss if their right of way can't be protected. They have balance of convenience in their favour because they have acquired the said right since they have purchased the suit properties. Hence I answer No. 1 to 3 in affirmative and proceed to pass the following order.

**ORDER**

1. Application is allowed.
2. Defendants are restrained by way of temporary injunction from causing any obstruction on the way of southern side of suit properties till the decision of the suit.

Dated : 02.01.2025.  
Place : Pimpri, Pune.

( N. R. Gajbhiye )  
Civil Judge Junior Division,  
Pimpri, Pune.

**CERTIFICATE**

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

Name of the Stenographer           :- Smt.B.S. Jamkhandi ( Karnikar)  
Name of the Court                   :- Shri. N. R. Gajbhiye  
  C.J.J.D. and J.M.F.C. Pune.  
Order / Judgment Date            :- 02/01/2025  
Order / Judgment signed by  
the Presiding Officer on         :- 02/01/2025  
Order uploaded on                 :- 04/01/2025