



R.C.S.No.53/2022

Shankarlal & Ors.Vs Shailendra & Anr.

CNR NO.MHRG160003032022

**ORDER ON AD-INTERIM APPLICATION AT EXH.5**

Perused the whole record alongwith documents filed on record. Heard learned advocate for plaintiffs at length.

02. This an application for ad-interim temporary injunction against defendant No.1 from obstructing, interfering, or disturbing the applicant's entry, use, access and easement to the suit road, to access the suit road the said property by removing the iron gate on the starting point of the suit road. Learned advocate Shri. S. A. Ambolkar for defendant No.2 filed Notarized written statement on 27.02.2023. Thereafter, he absent when called 05:00p.m. to 05:30 p.m, so matter came to put on Today's board. Today also, he absent when repeatedly called. Due to his absence, say on application at Exh,17 could not be obtained. Hence, I proceed to decide application in absence of defendants.

03. Learned advocate for plaintiffs submitted that under a registered deed of conveyance one Dr. J.S. Bhattor acquired all right, title and interest in the said property from Sharad Gajanan Khandagale. Thereafter, disputed land was owned by one K.J. Bodiwala. Since there was no road available for access to the said property. Thereafter, K. J. Bodiwala executed an agreement dated 15.12.1997 and construct the road which is exclusively a

private road to be used by the actual plot owners, in case plot is sold or part thereof the new party will have legal right to use the road. He further submitted that said road is constructed on disputed land which is adjoining to the said property. Thereafter, by a deed of conveyance dated 04 September, 2006 Dr. J. S. Bhuttor sold the said property to the applicants. Accordingly, applicants continued to use the said suit road to access the said property. Thereafter, defendant No.1 purchased the said disputed land from defendant no.2, by agreement for sale dated 09 March, 2015. He further submitted that said agreement is silent on the aspect of easement right. Thereafter, defendant No.1 illegally, installed the iron gate on the entry point of the suit road and obstruct the use and access to the suit road. He further submitted that defendant No.1 is taking undue advantage with an intent to extort money and thereby restraining the applicants from exercising their lawful easement right of way to access said property, knowing the said road is the only access available to applicants.

04. I considered above submissions along with whole record. It is seen on record that deed of conveyance dated 04.09.2006 No.1366/2006 show that plaintiff purchased suit property from one Dr. Jarnalsingh Swarnsingh Bhuttor. It is further seen that there is no objection certificate regarding construction of the road. It is further seen that defendant No.1 purchased the said disputed land from defendant No.2, by agreement for sale.

05. Moreover, defendant No.2 appeared and filed her written statement contending that defendant No.1 has no right to the suit road or disputed land, he has illegally installed the

iron gate at the entrance of the suit road to usurp the suit road and harass others. So at present, there are sufficient grounds to prima facie hold that there is suit road which is the applicants continued to use the said suit road to access the disputed property and defendant No.1 is trying to restrain the applicants from exercising their lawful easement right of way to access said property. In such scenario, I am of the opinion that plaintiff's right over the suit road needs to be protected. Accordingly, I proceed to pass following order-

**ORDER**

01. Application is allowed.
02. Defendant No.1 is restrained by way of ad interim injunction from exercising their lawful easement right of way to access said property till hearing of Exh.5.

(M.W.Jadhav)

Date :28.02.2023.

Civil Judge Junior Division Pali.