

FURTHER ORDER BELOW EXH. 5

1. This is an application under Section 94 read with Order 39 Rule 1, of Code of Civil Procedure for temporary injunction during pendency of suit.
2. As per plaintiffs, the property bearing Survey No. 54/11 (**Old Survey No. 616**), total area 00.29.00 H.R., assessed at Rs. 00.06 Ps., situated at Mouza Taligaon, Tal. Kudal, Dist. Sindhurg, hereinafter referred as *suit property*, is owned and possessed by them. Since then it is in their possession. Nobody including defendants are in any way concerned with the suit property. Defendant No.1, is the Ex-Sarpanch and present member of the Grampanchayat and other defendants are workers of his political party. Taking advantage of the illegal and wrongly recorded Mutation Entry No. 1921, defendants in collusion with each other are trying to create a road admeasuring 300 x 3 Meters long through suit property.
3. Initially they tried to measure the said portion, but as plaintiff objected to it, the Village Panchayat, Mangaon, in collusion with defendants and under political pressure filed suit bearing R.C.S. No. 33/2017, against the present plaintiffs in this court. In that matter also an application for interim injunction was filed by defendants, but it was decided in favour of present plaintiffs. Suit is still pending and the said order is not challenged in appeal by those defendants. But, they filed proceeding under the provisions of Code of Criminal Procedure before Executive Magistrate, Kudal, bearing Application No. 06 of 2017. Using political clout there is every possibility that defendants may get it decided in their favour though the said application is illegal. On 07/12/2017, defendants started threatening to enter into suit property and to create a road through it forcefully. Apprehending dispossession the plaintiffs filed present suit and present application in it for interim relief of injunction.

4. All the defendants appeared and filed their say vide Exh.21. They admitted the ownership of the plaintiffs over suit property but denied the contents of the application. They further pleaded that there is a road passing through suit property as shown in the map produced. The entry of the said map is made by the Surveying Officers in the year 1958, when they noticed it during surveying at that time. The said road starts from Mangaon-Kaleli Road to Kelbai Temple and reaches up to Taliwadi and other villages through Tala-Bilvas boundary through Survey Nos.54/3, 63/4 and 60/13, which are Government lands. All the villagers in the vicinity are using it, the size of which is about 300 x 3 Meter. The said road is mutated in the Village Panchayat Property Register vide its Resolution No. 7(1), dated 28/01/2016. If it is closed the villagers in the vicinity will have no approach road.

5. Taking advantage of the order passed below Exh.5, in R.C.S. No. 33/2017, the plaintiffs now trying to obstruct its use. Therefore, on 08/11/2017, they approached Tahsildar, Kudal. In the said proceeding the plaintiffs were called, but they deliberately remained absent during inquiry of the road. On 12/01/2018, during hearing plaintiffs admitted the obstruction made by them. Therefore, spot inspection was ordered. In the said spot inspection also it is revealed that there exists a road and plaintiffs objected to it. The suit is bad for non-joinder of necessary parties, so also for want of proper frame in view of Section 91 r/w. Order 1, Rule 8 of the Code of Civil Procedure.

6. Heard both the sides at length. The learned advocate for the plaintiffs submitted that ownership is admitted. Therefore, there is heavy burden on the defendants to prove the existence of road. Relying on previous findings in R.C.S. No. 33/2017 and issues framed in it, he submitted that the controversy is already now pending and ignoring this

fact now fresh adjudication cannot be initiated. The three basic elements are in favour of plaintiffs. The inquiry going on before Executive Magistrate is not impartial. Therefore, application shall be allowed. However, as per defendants, the previous observations of the court are not clearly in favour of plaintiffs, rather court held the existence of road. The people in the locality are using the said road since long back and if it is closed, they will suffer irreparable loss. They further relied on the documents produced today pertaining to proceedings before Tahsildar. Defendants also disputed the tenability of suit for want of proper frame.

7. Considering the pleadings and submissions of both the parties, following points arrived for my determination. I recorded my findings on each of them as follows, for the reasons discussed below-

Sr. No.	POINTS	FINDINGS
1.	<i>Whether the plaintiffs have made out a strong prima facie case to justify grant of interim injunction ?</i>	<i>.....In the affirmative.</i>
2.	<i>Whether balance of convenience lies in favour of plaintiffs?</i>	<i>.....In the affirmative.</i>
3.	<i>Whether any irreparable damage or loss may result to plaintiffs if injunction is withheld?</i>	<i>.....In the affirmative.</i>
4.	<i>What order ?</i>	<i>..... Application is allowed.</i>

REASONS

AS TO POINT NO.1 - Prima facie case

8. The main contention of the plaintiffs is that, the suit property is owned and possessed by them. There is no road passing through it and as such defendants are not in any way concerned with it. Despite that they are trying to create a road through it. In this regard i.e. particularly facts

pertaining to existence of road there was previous suit filed by Grampanchayat, Mangaon, bearing R.C.S. No. 33/2017. In the said matter Grampanchayat claimed existence of road and sought interim injunction against present plaintiffs. While passing order below the application for interim injunction, Exh.5, this court observed that the Grampanchayat relied on Mutation Entry No. 1921 and copy of register of roads, but its exact area or location is not mentioned and no inference can be drawn about the existence of road. It is further observed that the evidence of non-existence produced on record in that matter is tilting in favour of defendants i.e. present plaintiffs.

9. Though the party in the previous suit was Grampanchayat and present suit are members of general public, the present defendants are standing in the shoes of Grampanchayat as the said body is working for them and previous suit was only for their benefit. Therefore, in view of observations made by this court in the order passed below Exh.5, in previous suit bearing R.C.S. No. 33/2017, discussed above, now defendants are bound to produce on record some additional and strong material to corroborate their case.

10. In this regard the defendants mainly relied on the Mutation Entry No. 1921 and the copy of register of roads, wherein there is mention of road. At the cost of repetition it is necessary to mention that this is just general fact mentioned and nothing mentioned about its exact location. Therefore, no inference can be drawn on the basis of these documents. The written statement also makes general statement that there exists a road admeasuring 300 x 3 Meters passing through suit property. If this fact considered in the light of map produced on record there appears doubt about the possibility of existence of a road with such a long length in the suit property.

11. In addition to it, the area of suit property is admittedly 29R. The defendants specifically pleaded, so also it is mentioned in the copy of register of roads, relied by defendants that the size of the road in the suit property is 300 x 3 Meters. Both these areas, if compared, it is clear that if a road of such a size is in existence at the suit property, there may not be anything remained in the hands of plaintiffs to cultivate. This fact also negates the possibility of existence of road.

12. The another important aspect pertaining to these documents is that, the Mutation Entry No. 1921 was recorded on 21/05/1960. It is in respect of the persons holding various rights in the properties mentioned therein. It is cursorily mentioned that there exists road passing through various survey numbers and mutation entry pertaining to those roads was recorded in respect of 616/11. In the column of other rights it is mentioned that there exists a public road in Survey No. 109/1. Thus, there is doubt whether the road mentioned in the said mutation entry is in existence at suit property.

13. The defendants are duty bound to remove this ambiguity by producing some additional material. The defendants produced the copy of register of roads. It shows some tampering. If the said document perused minutely the initial part pertaining to description of road is written with different ink and later part is shown to be inserted with some different ink, which mentions the number of suit property and size of the disputed road. The initial description is also not matching with the later description.

14. The another document is Grampanchayat Resolution No.06. It is in respect of recording of the said road in the record maintained by the Grampanchayat. The said resolution is shown to be passed on 12/08/2015. It is mentioned in the subject (Agenda) column of the said meeting that it is about re-opening of the ancestral road and resolution was passed to the

effect that the disputed road is already shown to be in existence in the revenue record, therefore, it is necessary to make its necessary entry in the Grampanchayat record. This resolution show that when it is passed the said road was not at all open or was in existence. Despite that resolution was passed and the above referred entry was done.

15. Both the above documents i.e. register of roads and resolution, rather than removing ambiguity created by Mutation Entry No. 1921, adds more confusion to it. The defendants further relied on the certified copies of proceedings going on before the Tahsildar and it is submitted on their behalf that it is admitted by the plaintiffs before the said authority that they blocked road. So also the spot inspection report, panch yadi, shows that there exists the road as claimed by defendants.

16. In this regard learned advocate for the plaintiffs also filed certain documents today showing that the proceeding going on before Tahsildar, is under Section 147 of Code of Criminal Procedure and throwing light on the fact that it is not going on in its proper prospective.

17. The submissions from the side of plaintiffs may be disputed, but these documents clearly show that all the inspection was done only on the basis of oral evidence. There is no documentary evidence to corroborate the version of the defendants. Rather than approaching the Tahsildar, under the provisions of Mamlatdar Court's Act or similar one some other way was attempted to be followed. In such a situation there is a doubt over the bona fides of the defendants and possibility of the forceful dispossession cannot be ruled out. The admission of fact of obstruction mentioned in the roznama is of no use in absence of any concrete evidence of existence of road from the side of the authorities, who are custodian of whole record pertaining to suit property.

18. Against these deficiencies the important fact cannot be ignored that the ownership of the plaintiffs over suit property is admitted by defendants. So also, at the cost of repetition it is necessary to mention that if the area of the road, 300 x 3 Meters considered with the size of suit property, there remains nothing as that of suit property. In view of above discussions and these important aspects it is clear that there exists no road as claimed by the defendants. It is also clear that they are trying to create it forcefully through the suit property and as such there is strong *prima facie* case in favour of plaintiffs. Accordingly, I recorded my findings on Point No.1, in the affirmative.

AS TO POINT NOS.2 AND 3 - Balance of convenience and irreparable loss

19. Admittedly, the plaintiffs are the owners of the suit property and in possession of it. As stated above if the road of such a huge size is allowed to be created they will be dispossessed forever and original situation cannot be restored. They will suffer such a loss which cannot be compensated in terms of money. Therefore, the factor of balance of convenience tilts in favour of plaintiffs and they will suffer irreparable loss. For all these reasons, I answered Point Nos.2 and 3, in the affirmative and in view of findings on all the points, following order -

ORDER

- A.** Application, Exh.5, is allowed.
- B.** The interim injunction granted by this court by its order dated 12/12/2017, is confirmed till the final disposal of this suit.
- C.** Costs in cause.

Sd/-

KUDAL

(KOMALSING RAJPUT)

DATE – 01 /02 /2018

C.J.J.D., KUDAL, DIST. SINDHUDURG