

Order below exhibit 124 in R.C.S. No. 28/2018

Chetan Samant

Versus

Mangesh Tulaskar and others

This is an application on behalf of the Plaintiff inter alia claiming mandatory injunction against the Defendant no. 4 who is acting at the behest of the Defendant no. 1 to 5, 15 to 17 and 19.

2. The Plaintiff contents that he has filed an application at ex. 33 and 84 against the Defendant no. 1 to 5, 15 to 17 and 19 inter alia claiming that they shall not cause any obstruction on the alleged road nor they shall cause any impediment on the road and thereby cause obstruction to the right of Plaintiff with respect to said road. The said application is said to be pending. (Application at ex. 34 is already decided). However in the mean time when there was no injunction order the Defendant no. 4 took its disadvantage and has raised a compound wall to her newly constructed house and obstructed the road. Apart from this, she has also obstructed the road at the juncture of the boundary of Schedule B and A property by raising an impediment. Hence The present application is filed to get removed such impediment caused by the Defendant no. 4.

3. Except for the Defendant no. 4 and 15, no one has filed say to the instant application. The Defendant no. 4 has contended that she has not obstructed any order. She has not made any new construction. She has arranged the 'laterite stone' for the sake of protection of the area belonging to her. It was not arranged to make any hurdle to the Plaintiff as she contents that there is no road on that site. The Plaintiff has made false allegations with respect to the same. She further contended that the Plaintiff has not made any complaint with that regard. As per her, the Plaintiff is

trying to put a false case and thereby causing damage to the Defendant. She further submitted that facts will get clear after the report of court commissioner will come on record. Thus she has prayed to reject the application.

4. The Defendant no. 15 has also filed say and contended the application of the Plaintiff to be false. He has filed a common say to the present application and the application at ex. 84. It is his case that the Schedule B property belongs to all defendants. They are its co-sharers and the said property is acquired to them as per tenancy law. As per him Schedule B property is not yet partitioned. However, some of the co-sharers are possessing in their respective area since many years. The said property also has house belonging to many other co-sharers.

5. It is further contended by him that, the Schedule B property has survey no. 28 towards its northern side. A road is existing from that spot to the area where co-sharer Balkrishna Tulaskar and others have their house. From that permanent road, the defendant and other co-sharers have a private way/Paywat/road which is used only by the defendant and their other co-sharers. The said road comes to end in the area which is possessed by Balkrishna Tulaskar and others. It is their specific contention that the said way does not reach till the boundary of Schedule A property.

6. It is his contention that the plaintiff is trying to take disadvantage of the pleadings and the map drawn in Reg. Civil Suit no. 4/2011. Hence, as per him the plaintiff made false statement that there is existence of road as per contention. He has filed a false map along with the suit. The road shown in map at exh. 21 in Reg. Civil Suit no. 4/2011 and the road shown by plaintiff are different. It is the contention of defendant that the road shown by the present defendant no. 1 to 3 in Reg. Civil Suit no. 4/2011 which passes through Schedule B property got diminished before the counter claim

came to be disposed off. It is further contented that the compound raised by defendant no. 1 as per the map at exh. 21 in Reg. Civil Suit no. 4/2011 is still in existence. The plaintiff has wrongly shown the road from point A to point B which surrounds compound raised by the defendant no. 1. It is wrongly shown by him that the road further joins Schedule A property. However, if it is presumed that there is road as per the contention of the plaintiff even then the road as shown by the plaintiff and the road as shown by the defendant in Reg. Civil Suit no. 4/2011 is different.

7. It is further contended that in R.C.S. 4/2011 a Court Commission was conducted. However, it can be seen from the said court commission that a permanent road is existing which commences from the northern side of survey no. 28 and then the said road turns towards the east side. From that turn, there is a rough road (कच्चा रस्ता) which ends after a certain distance. The said road does not touch or ends to the boundary of Schedule B property. The road is shown in yellow colour in the said court commission as shown by defendant no. 1 and marked as A, B, C. D is in fact not in existence.

8. It is further contended that the defendant no. 1 has constructed a compound wall surrounding the area shown in yellow colour. Therefore, the said court commission map shows that the map at exh. 21 in R.C.S. 4/2011 is different from the actual factual circumstances. Moreover, the defendant no. 1 to 3 admitted the existence of the compound wall. Therefore, there is no question of the existence of any road as contended by the plaintiff. It is further contended that since when the court commission in R.C.S. 4/2011 was conducted, there is a change in circumstances. Therefore, the alleged rough road is also not in existence.

9. The defendant has further contended that. as the plaintiff was taking education when the Schedule A property was purchased. The Defendants

have raised a doubt that the transaction is Benami. Therefore, as the plaintiff was residing at Kankavali he has never possessed or entered in the Schedule A property. Similarly, as the plaintiff constructed a compound wall (काट्यांचे कुंपण) through his father on the southern side of Schedule B property, the contention of the plaintiff that there exist a road appears to be after thought fact.

10. The defendant further contends that the dispute in R.C.S 4/2011 was between the defendant no. 1 to 5 and as there remained no point of dispute and the parties therein lost interest in the said suit. As a result the suit as well as counter claim was dismissed. Therefore the defendant contends that the plaintiff is trying to create a road which never existed. And on such basis he is trying to establish his right through the property belonging to the defendant. He wants to create a new road. Therefore, he is trying to take disadvantage of the documents in R.C.S. no. 4/2011.

11. The defendant further contends that, the plaintiff resides in Parule Dutondwadi. He as well as his father used to approach the Schedule A property through the use of a boat. The plaintiff has transported his material through the said rout. The plaintiff owns a fiber boat. He further contends that there was no shrimp farming in the Schedule A property. The said project never commenced. Therefore, the plaintiff had no option but to sale out the property. However, the purchaser are not willing to buy it as the only road available to the plaintiff is through the river. As a result, the plaintiff is trying to establish a road from Schedule B property. Therefore, he is trying to create a illusion that a road existed even prior to the time when the property was purchased by the plaintiff.

12. It is further contended that after this court granted exparte ad interim relief in his favor, the plaintiff got strength for completing his illegal acts. As a result, on 8/5/2018 the plaintiff and his father came in

Schedule B property along with J.C.B. and some workers, they were obstructed by Balkrishna Tulaskar and him. They asked to the Plaintiff that why they have brought such machinery in the property. However, they said that they have the order of the court and thats why they want to construct a wide road. However, the said order was never shown to Balkrishna Tulaskar and to him. As a result, the plaintiff and his father approached Nivati police station. Nivati police called Balkrishna Tulaskar and him at police station. However, as it was not possible for him to go at the police station, he intimated that he will come on the next date. However, the police did not show any patience and came to the disputed suit property on the very day along with the plaintiff. The police said that as per the order of court they cannot obstruct the road. And thus the police took them to the Nivati police station. They were asked to remain at police station till 10.00 p.m. Some signatures were also taken but at even at that place the order of court was not shown to them.

13. Hence, the defendant claims that it is false to say that he obstructed the order of court even though he was having its knowledge. As a result, an offence under section 188, 504, 506 was registered against him. Accordingly, he was intimated to remain present in the police station. This shows that the plaintiff is taking disadvantage of the police and trying to pressurize the defendants and his co-sharers. The Hon'ble District Court has rejected the temporary injunction application and even then the plaintiff is making an unsuccessful attempt through this instant application.

14. The defendant admits the existance of road which commenced from Parule Bazar to Makdamwadi. However, they have denied the facts about its repair works. The defendant have contended that the boundaries as mentioned in the sale deed of plaintiff are incorrect and thats why the plaintiff has not produced the sale deed. The incident as contended by the

plaintiff which took place on November 2017 is said to be concocted. The plaintiff has no right to get any order against the defendant no. 1 to 5 and 15 to 18. If such order is passed against the defendant then it will cause irreparable loss to the land belonging to the co-sharers. The possession of the defendant will be disturbed. On the contrary there will be no loss to the plaintiff. It is further contended that the plaintiff is taking disadvantage of the order passed by Hon'ble District Court and thus trying to amend his pleading and by adding the other defendants he is again trying to gain disadvantage of the said order. The defendant no. 15 to 77 which are the proposed defendants. The plaintiff has mentioned their wrong addresses. They are actually residing at different places in Mumbai and outside district. The plaintiff has wrongly mentioned that the other co-sharers have never objected him. In fact it is mentioned that if the co-sharers would have been made party to the suit then they would have objected the plaintiff. However, the plaintiff took disadvantage in such fact and avoided to make them party. The plaintiff has intentionally mentioned a wrong addresses. So as to avoid service over said defendants. Therefore, on the same count the application of plaintiff is liable to be rejected as per the defendants.

15. Hence, it is contended that the balance of convenience is tilted in favour of the defendants. However, if the defendant fail in this case then it will cause damage not only to their rights but also to the rights of other co-sharers. Hence it is prayed to reject the interim application with cost of Rs. 20,000/-.

16. I have heard the respective arguments advanced by the Ld. Adv for the parties. After considering the rival contentions, the following point for determination arise for my consideration.

Sr.No.	Points	Findings
1	Whether the plaintiff proves that, he has made out a prima facie case?	Yes.
2	Whether the balance of convenience tilts in granting injunction ?	Yes.
3	Whether the irreparable loss caused to the plaintiff, if injunction is not granted?	Yes.
4	What order?	Application is allowed

REASONS

AS TO POINT NO. 1 TO 3

17. The plaintiff has relied on the previous litigation between the defendant no. 1 to 5. The copy of suit bearing no. 4/2011 at exh. 11. The defendant no. 1 in the present suit appears to be the plaintiff in the said previous suit. Whereas the defendant no. 2 to 4 were also defendants in the said previous suit. The suit property in the said previous suit was the Schedule B property in the present suit.

18. The copy of plaint in the said previous suit shows that the defendant no. 1 herein i.e. the plaintiff therein, filed suit against the defendant no. 2 to 14. The suit property in the said suit was said to be an area of about 45 gunthe exclusively in possession of the defendant no. 1. It was his further contention that, the defendants in the said suit were trying to create a way from the area possessed by him, in spite of the fact that, an old way is available to them.

19. The defendant no. 1 to 3 in the said previous suit i.e. the defendant no. 3, 4 and 5 in the present suit filed their written statement. The said

written statement is at exh. 12 in the present suit. From their written statement it appears that it was their contention that

“ प्रतिवादीस आपल्या घराकडे येण्यासाठी कर्ली ते परुळे या मुख्य सडकेपासून आत येण्यास एक डांबरी रस्ता आहे. सदरच्या रस्त्याचे पुर्णपणे डांबरीकरण झालेले नाही. सदरची वाट सुमारे १० फुट रुंदीची आहे. ती वाट नकाशात दाखविण्यात आलेली नाही. सदरची वाट वादी याने बाहुबलावर निळ्या रंगाने दाखविलेल्या भागात गडगा घालून बंद करण्याचा प्रयत्न केला. प्रतिवादी याने त्यास विरोध केला व पोलीस स्थानकात वादी विरुद्ध तक्रार नोंदविली. प्रतिवादीने केलेल्या विरोधामुळे आज वाट अस्तित्वात आहे. सदरची वाट पुर्वापारची असून त्या वाटेवरून जाण्या—येण्याचा, वाहने नेण्याचा, गुरे—ढोरे नेण्याचा, मेंमउमदज इल दमबमेपजलए मेंमउमदज इल चतमेबतपचजपवद दक बनेजवडंतल तपहीज चा हक्क प्रतिवादी यांना प्राप्त झालेला आहे. सदर वाटे शिवाय प्रतिवादीस आपल्या घराकडे येण्यास अन्य कोणताही मार्ग नाही. सदर वाटेचा वाटप त्या भागात रहाणारे खडपकर कुटुंबिय करतात.”

18. The said defendants in the previous suit thus filed counterclaim and demanded that the above-mentioned way be declared as their easementary right. The said road be given to them without any obstruction or impediment.

19. The plaintiff in the said suit i.e. defendant no. 1 in the present suit, filed his written statement and contested the counterclaim. He contested the easementary right of the defendant. He contended in the written statement to the counterclaim that

“ प्रतिवादी १ यास स्वतःचे घरी जाण्यासाठी परुळे ते कर्ली या मार्गावरून दोन पायवाट आजमितीस पुर्वापारच्या अस्तित्वात आहेत. तसेच उलटदाव्यामध्ये निळ्या रंगाच्या भागाने दर्शविलेल्या सभोवर जो गडगा आहे त्या गडगाच्या बाहेरच्या बाजुने सुध्दा प्रतिवादी १ यास त्याच्या घरी पायाने, सायकलीने, मोटरसायकलने व चार चाकी गाडीने व प्रतिवादी क्र. १ ला डोळीने अथवा पालखीने जाण्याची इच्छा झाल्यास तेवढी पुरेशी असलेली वाट उपलब्ध आहे. सदरची वाट ही फार अनाधिकाळापासूनची अस्तित्वात असलेली वाट आहे. ”

20. Thus by contenting such facts, he claimed to reject the counterclaim by saying that the defendants in the said suit do not require a road as contended by them which is blue in colour.

21. Apart from this, it appears that the defendant no. 1 herein i.e. the plaintiff therein, filed an application for court commission. The said application is at exh. 14. It was allowed and the court commissioner was appointed. The B sheet of the court commission in R.C.S. no. 4/2011 is filed along with exh. 13. The order of court commission shows that the entire survey no. 41 hissa no. 1 was directed to be measured the suit property, means the Schedule B property and it was also directed to show the existence of any house compound for the road in the property.

In such background, the court commissioner drew the map. The said map is along with exh. 13 in the present suit. He drew the following map.



22. It can be seen that from the said map and the notes thereupon that the road shown in green colour as per the contention of the defendant, plaintiff therein, was not said to be in existence. However, a road said to be in red colour is said to be in existence but it comes to end near house no. 1 which belongs to the defendant no. 2 therein i.e. defendant no.4 in the present suit. The court commission opined that from the point where the road is shown as blue in colour was said to be in existence as per the contention of plaintiff in the said suit. However, it was not found in existence.

23. Therefore from the above peice of rival pleading and map in the previous suit, it prima facie show that a road exist in Schedule B property.

However, the court commission and the pleadings prima facie substantiate a fact that the said road is existing upto a particular point. The previous pleadings of a party are binding upon them. No doubt the parties can explain such pleadings if there are certain admissions to that regard. However, at this stage there is nothing adverse so shown by the defendants, which would mean that such road never existed. It also does not appear from their pleading that it was made in a difference circumstances which as on today cannot render as correct. Therefore, there is no prima facie explanation about the previous pleading of the defendants to consider facts such road never existed. Therefore such facts appear to be helping to the Plaintiff in the present case.

24. It is a settled law that pleadings are at a higher stand than those of evidence before court. The previous pleadings of the defendant no. 1 to 5 play a major role to show a prima facie case of the plaintiff. They act as estoppel against them. It is pertinent to note here that the contesting defendants have admitted the previous litigation. However, they have not clarified their previous pleadings. It means that they have not put forth such facts to differ with such previous pleadings. Therefore, their admission appears to be binding upon them. They have now shown any plausible reason to differ from their pleadings and the map so drawn in the previous suit. I say so because the over all gist of their previous pleading shows that a road commences from the point A till point B as shown by the Plaintiff in the present suit.

25. It is also pertinent to note that, the map drawn in R.C.S. 4/2011 by the court commissioner and the map drawn by the plaintiff along with the plaint are almost identical. The sum and substance of those map is that a road passes from Schedule B property to Schedule A property. In support to that the map filed along with the counter claim. By the defendant no. 2 to 4 also show that, a road goes from Schedule B property to Schedule A

property. As per the map drawn by the court commissioner the road is said to be existing at least near to the house of defendant no. 1 in the previous suit i.e. Sarita Vinayak Khadapkar who happens to be the defendant no. 4 in the present suit.

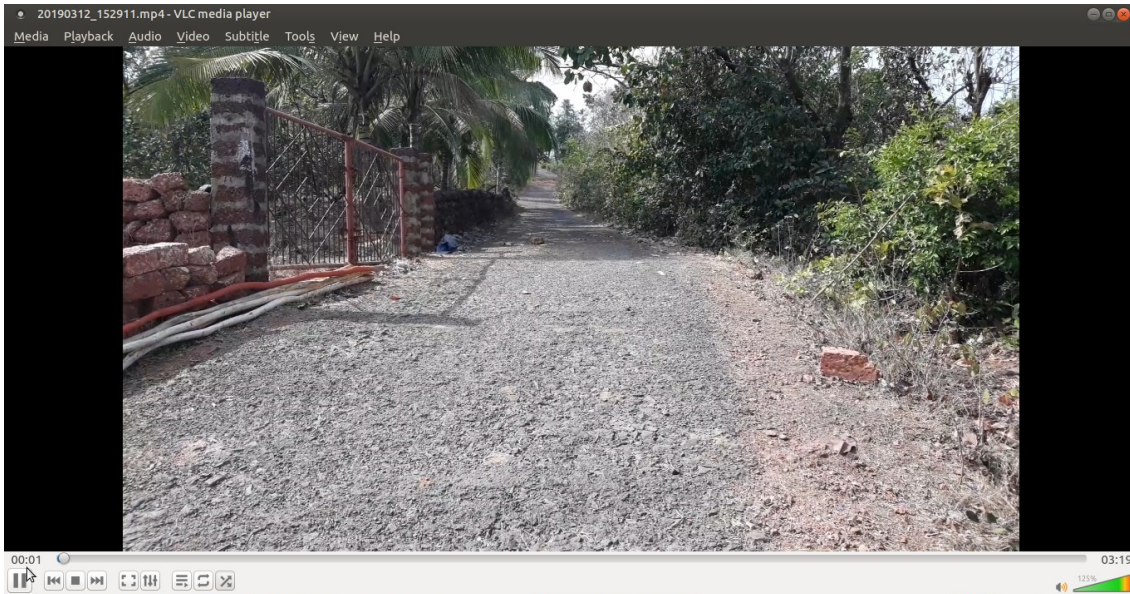
Facts appearing from electronic evidence on record

26. The following photo shows situation when the temporary injunction application at ex. 5 and 33 were heard. At that time following was the condition of the disputed road. The obstacle created by the Defendant no. 15 was shown to be as under as per the photogrpahs:-



The following images show the situation when the plaintiff made video shooting and the said shooting was filed on record vide a memory card produced by the Plaintiff at ex. .. The following are the screen shots taken at various juncture which can be seen from the time slot of the video

Image no.1



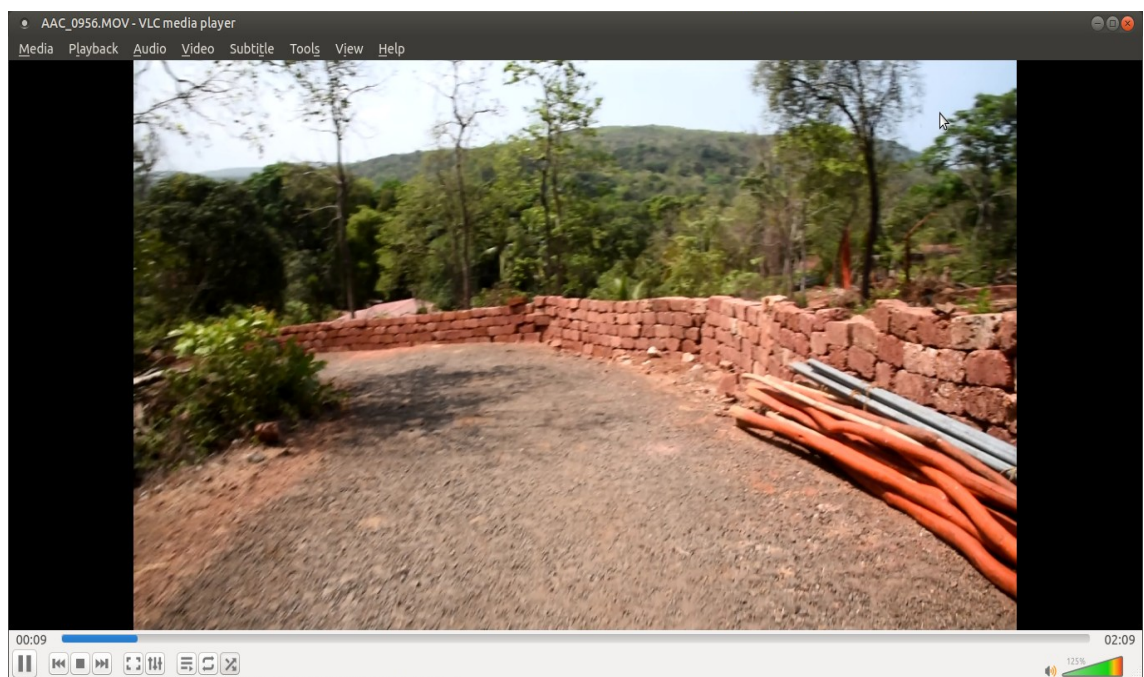
The image shows the road coming from the main road which is not a disputed fact. The said road also appears in the map drawn in the previous litigation, the previous photographs on record and the Court Commissioner has also disclosed about it in his report.

Image no.2



This image no. 2 is about the point A as shown by the Plaintiff in the Map. The screen shot of this video is taken at the time a temporary arrangement of laterite stone was contended to be made by the Defendant no. 15 when the application at ex. 33 was decided. The photograph with that regard was produced by the Plaintiff at the time of deciding such application which is produced on record and is produced hereinabove is resembling with the situation which appears from the video recording made by the Plaintiff and filed at ex.129. Therefore it can be seen that there was no arrangement of any compound wall when the litigation between the parties commenced. In fact it appeared to be a temporary impediment made by the Defendant no. 15, it can be clearly that an approach road was kept open so that the other Defendants could approach till their property.

Image no. 3



The following screen shots are taken from the video taken when the Court commissioner visited the spot on 09.05.2019. This photograph shows the improvement being made by the Defendant no. 15 at the spot A as shown in the map and as shown in the previous photographs hereinabove.

The difference in last images can be seen is that the Defendant no. 15 has now raised a complete impediment, it cannot be forgotten here that the property is claimed to be undivided, then how can he show his specific possession. However even then he has taken disadvantage of the fact that there was no restraining order. Apart from this it appears that he has changed the circumstances of the suit property by clearing the bushes and trees at the said spot. Therefore the Defendants have tried to change the circumstance of the suit property to destroy the road available to the Plaintiff.

Image no. 4



The following screen shot is from the video taken by the Plaintiff which is produced at ex 129. It can be seen from the said photo that before the Court Commissioner visited the site and the Defendant no. 15 raised impediment as shown in the earlier image, if a person would have walked through the road as shown in Image no. 2 following route appears to be going through the schedule B property. The said situation is before the Court Commissioner visited the spot.

Image no. 5

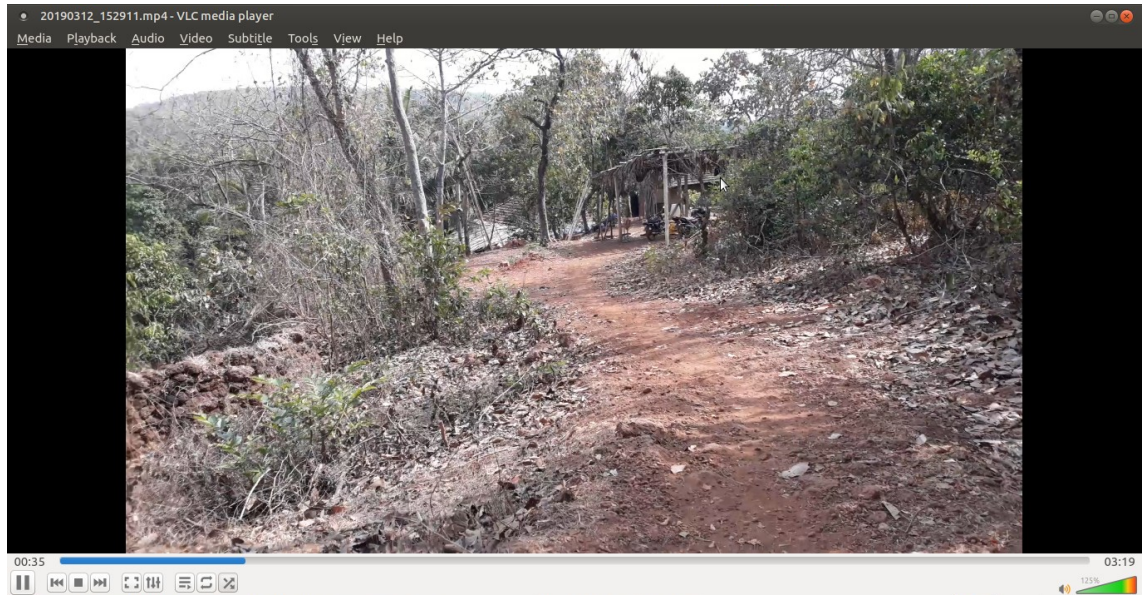
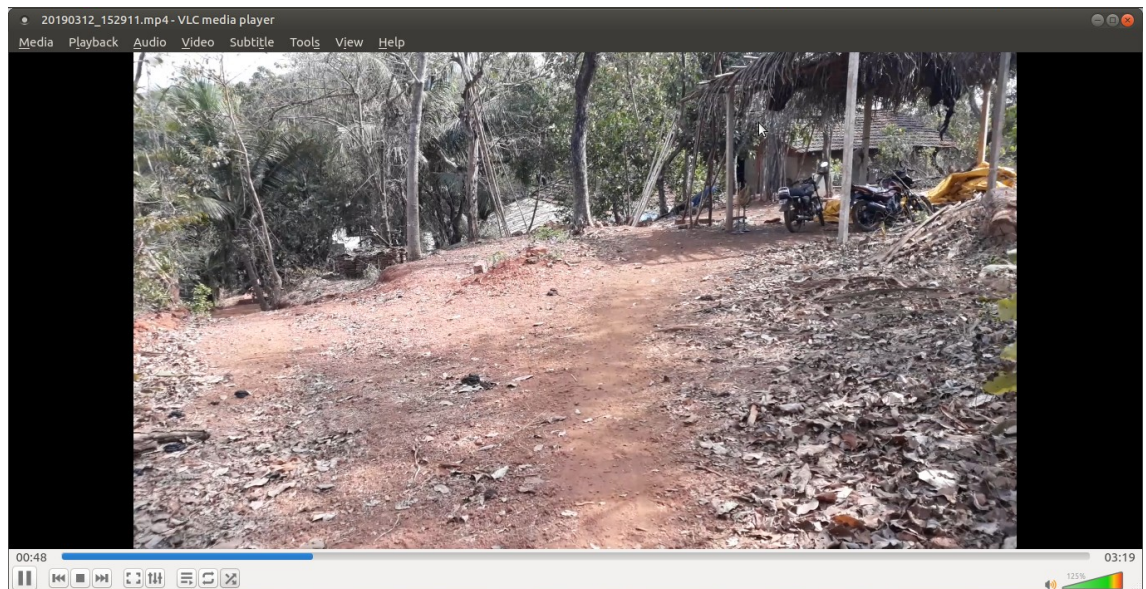


Image no. 6



The said screen shots show the time frame of the video which can show the continuity of the road, step by step as those are part and parcel of the same video. The existence of the road can be thus seen which appears to be existing as per the contention of the Plaintiff. It can also be seen that the road then turns towards the left side.

Image no. 7

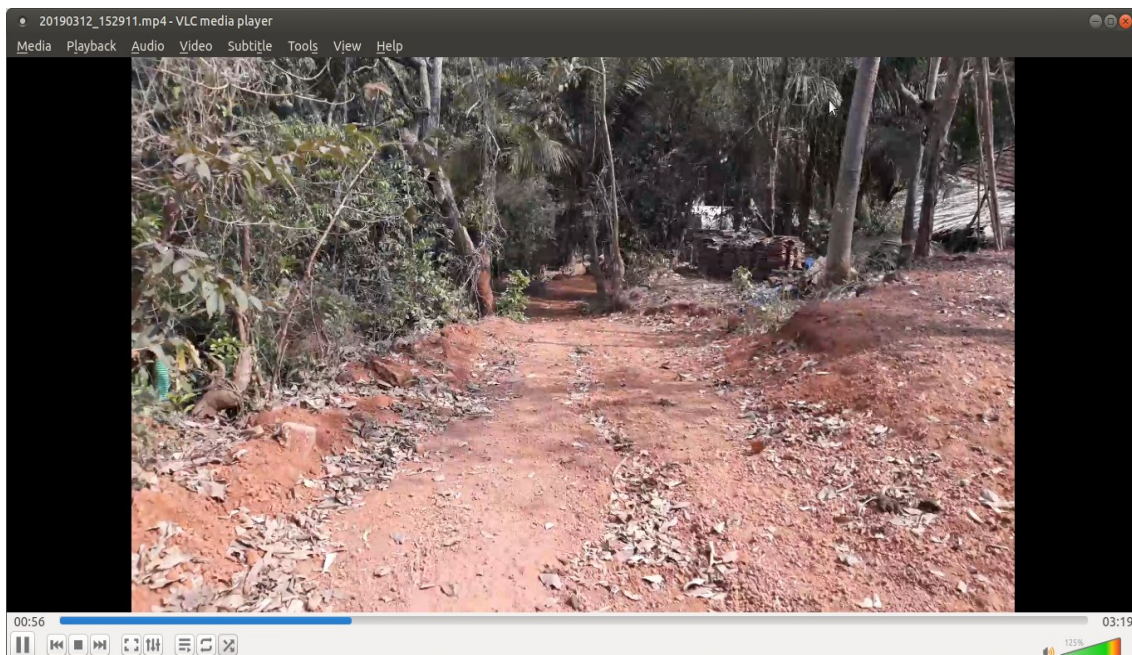


Image no. 8



At the juncture of above timeline it can be seen that there appears a obstruction in the road. The said obstruction is in fact contended to be compound wall raised by the Defendant no. 4 with respect to her property.

However a close view of the said impediment shows it is a temporary arrangement of laterite stone without use of any cement.

Image no. 9

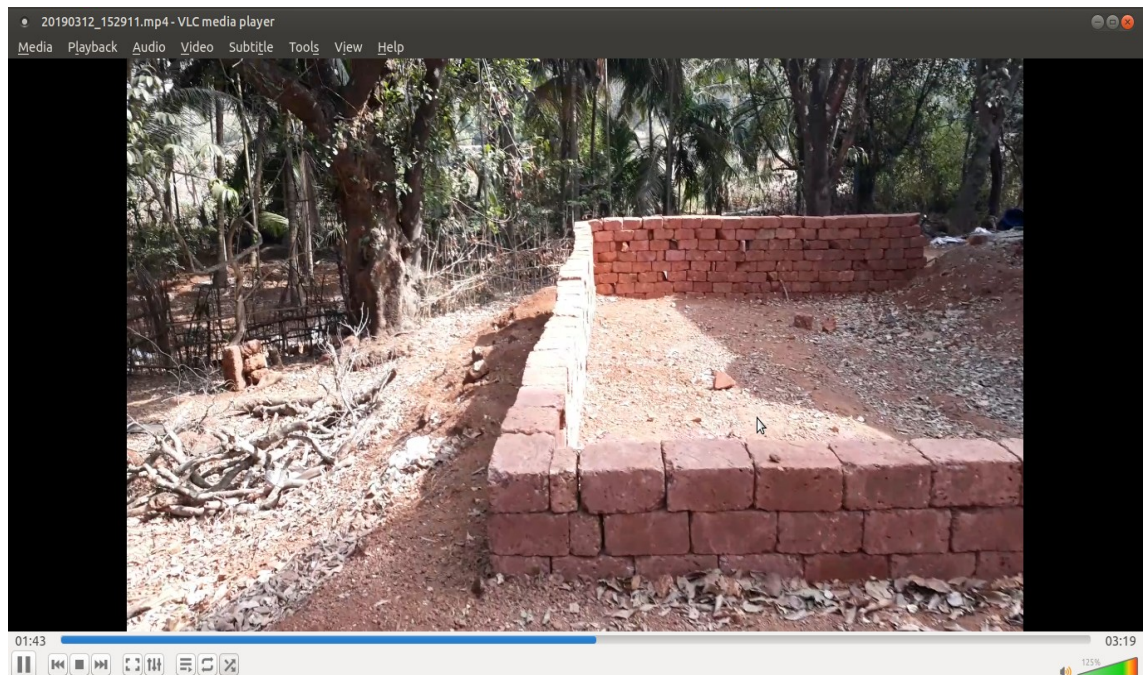
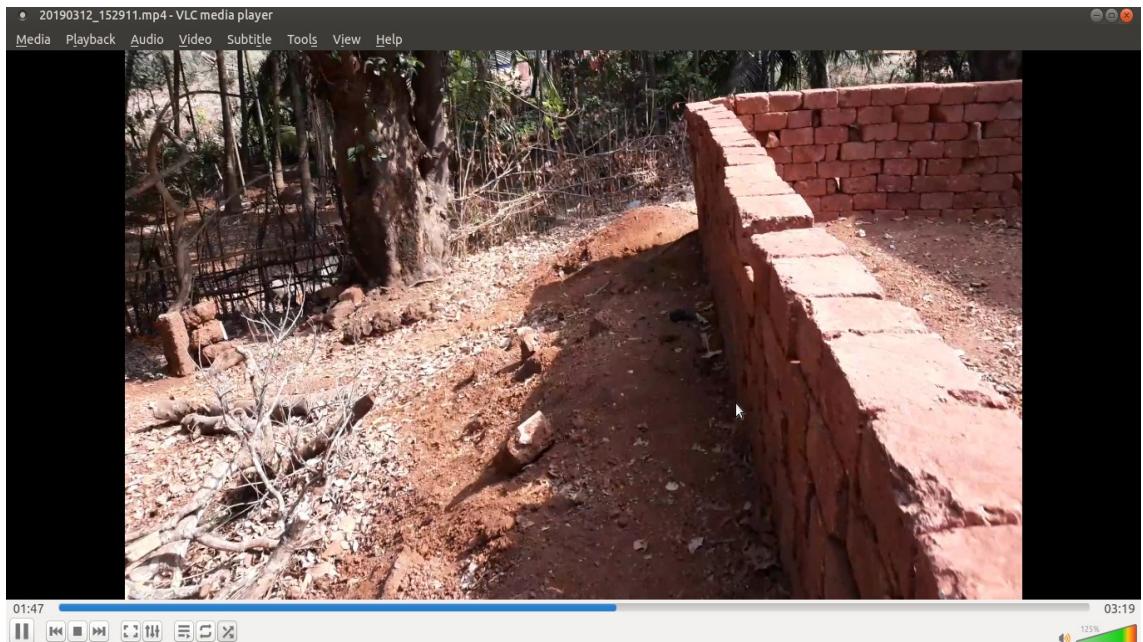


Image no. 10



The image no. 9 and 10 also shows that the so called compound wall appears to be a temporarily arranged impediment by the Defendant no. 4.

The next two images makes it clear that the said structure is clearly made on the suit road.

Image no. 11

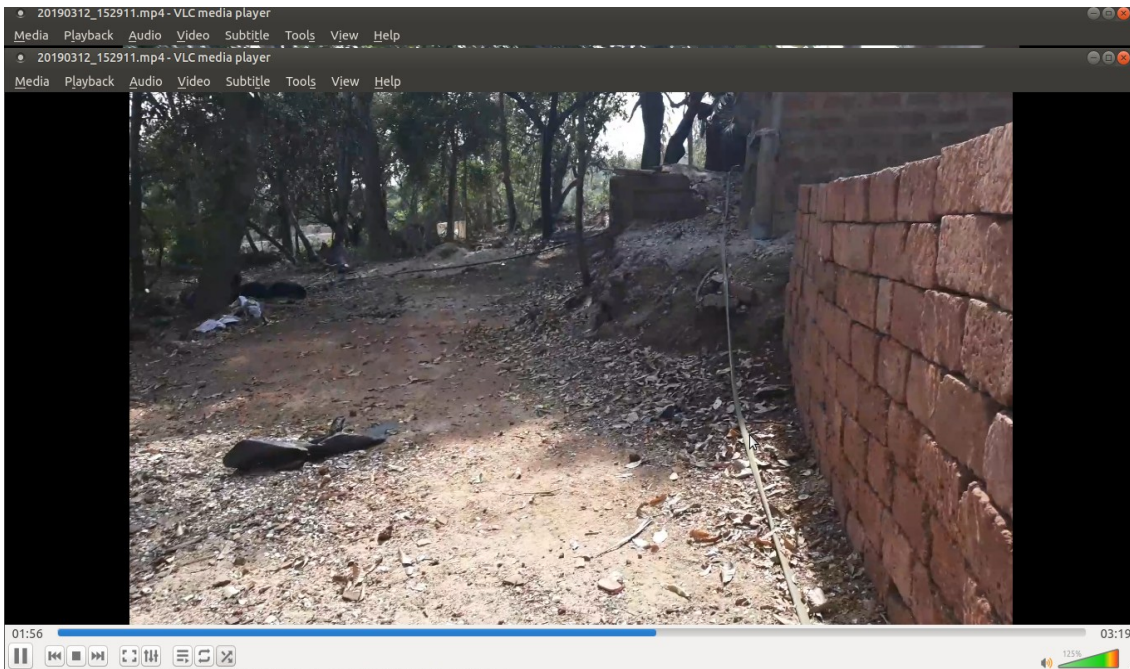
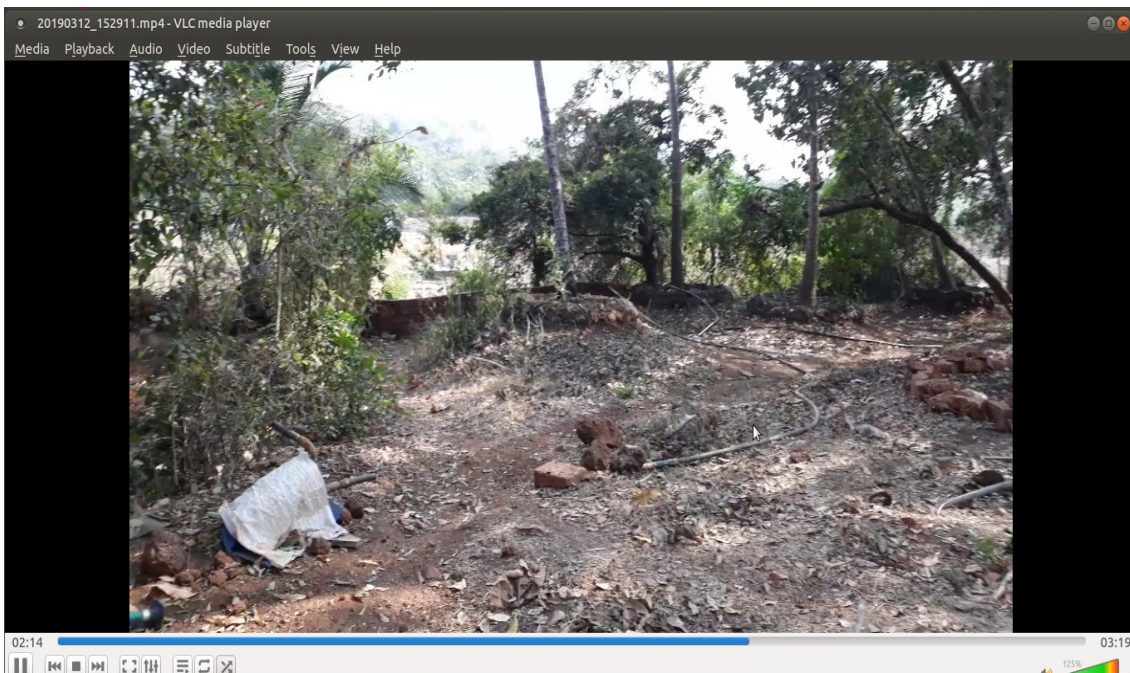


Image no. 12



The above image no. 11 and 12 show the continuity of the suit road beyond the hindrance created by the Defendant no. 4. It shall not be

forgeten here that since the suit is filed, the road is not under use i.e. for a period of about almost 1 and half year now. Therefore from the said point ahead, the road is not clean. But in image no. 12 the compound wall can be seen.

Image no. 13

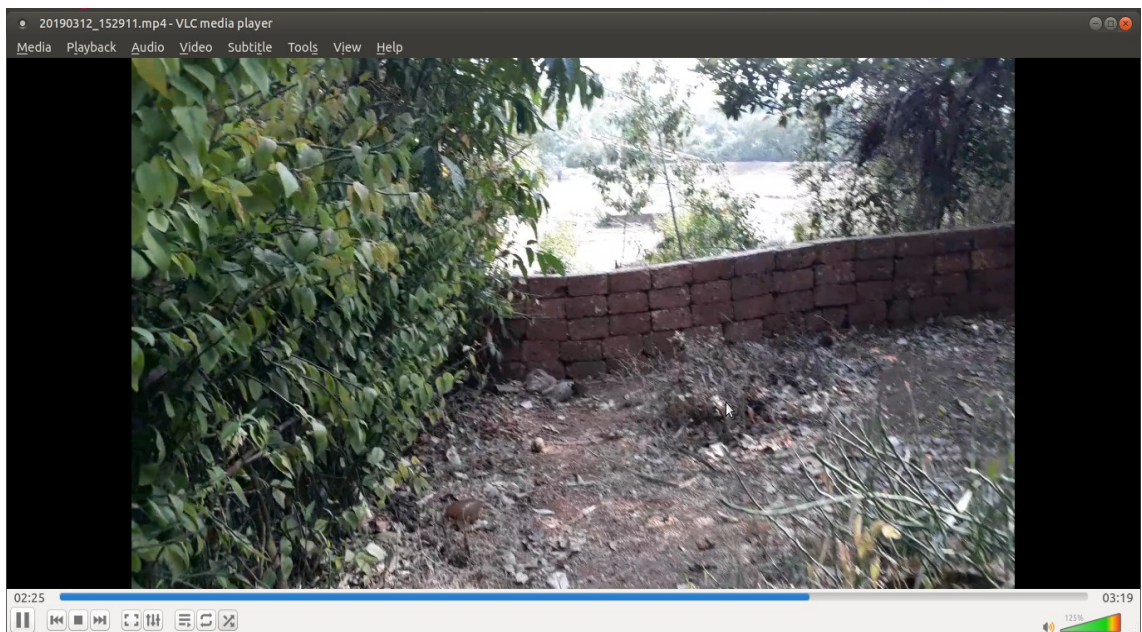
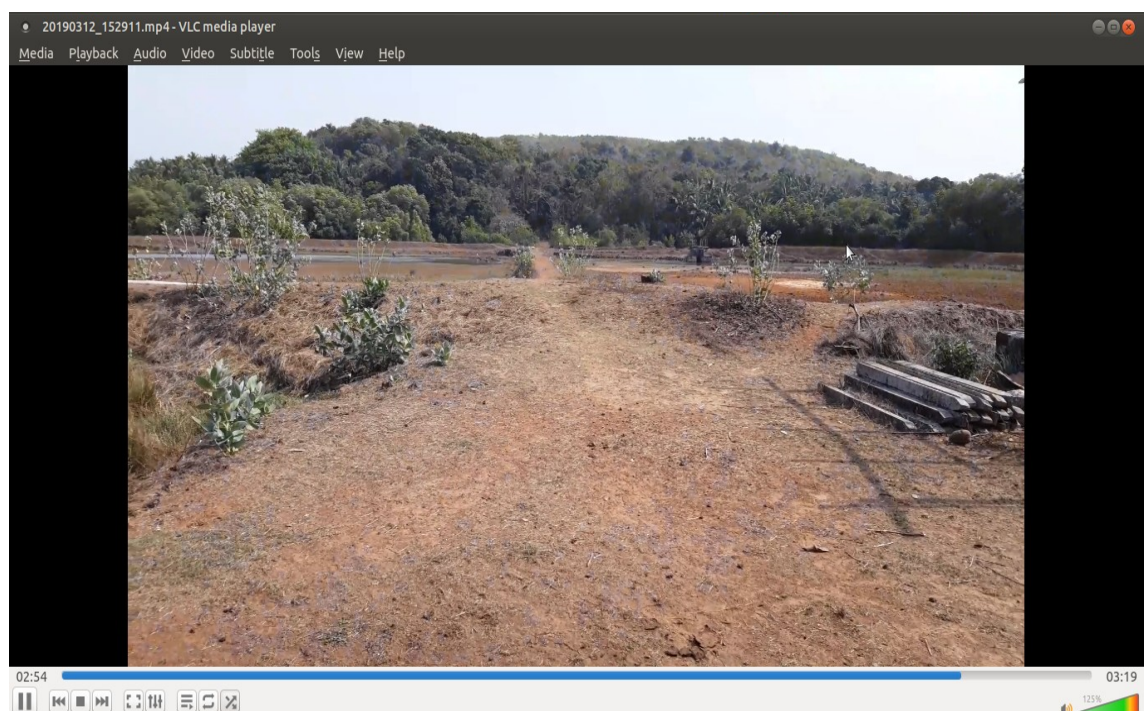


Image no. 14



It can be seen from the screen shots image 13 and 14 from the the video taken by the plaintiff which is produced on 2018 and the screen shots from the video taken by the court commissioner the video so produced by the plaintiff clearly shows the existence of the road from point A to point B.

27. It also appears from said video/screen shots that the laterite stones compound wall so created by the defendants appears to be a temporary arrangement. It is not a fixed compound wall at point B i.e. where the Schedule A and B property join. The circumstances altogether shows that such alternation made by the defendant only to defeat the right of the plaintiff. The electronic evidence is so clear that this court need not felt to re appoint the court commissioner. The screen shots from the video during the court commissioner also show the conduct of defendant no. 15 and 76 which appeared to be disrespectful.

Images about the same is as under





28. I say so because even after appearing in the suit they did not filed their say in time. Their oppose to the court commission appears to be baseless. The report of the Court commission appears to be in connossance with the video shot during the Court commission which shows that the Plaintiff was manhandled. If at all the court commission would have been completed, then there would have no loss to them. I say so because the court commission was appointed only to respect the road in dispute and to see if it does really exist. However, the oppose made by the defendants seems to be done only on the ground that the real facts which actually got disclosed due to the video filed by the plaintiff should not come on record.

29. Therefore, it prima facie appears from the photographs show that the defendant no. 4 has made arrangement of the laterite stones only as a temporary structure and upon the road which existed at that place and which ended to the opening of Schedule A property. Therefore her conducts appear to be opposed to the right of the plaintiff and nothing else. The screenshots make it clear that her so-called compound wall was never in existence when the suit came to be filed and even prior to that. This court came to such conclusion from the altogether facts of this case, the conduct of the defendants and on the basis of evidence produced from time to time.

Conclusion

30 Therefore it can be seen from the above facts and circumstances on the totality that the Defendants are in collusion with each other. The arrangement of laterite stones so made by the Defendant no. 4 appears to be made on the collusion with the other Defendants. The arrangement of such impediment at the opening of the road and at the place where the Schedule A property meets Schedule B property also appears to be part and parcel of the act of the Defendants.

31. From the overall circumstances, the plaintiff has prima facie satisfied this court about the existence of their road as contended by him. The electronic evidence and other documentary evidence so produced on record which is discussed hereinabove clarify the situation. The altogether facts of the Schedule A property show prima facie that there is no other approachable way to approach it. The defendants have not shown any alternate road available to them. Their theory with respect to approach to the Schedule A property by use of boat does not appear to be prima facie believable.

32. Similarly, the balance of convenience lies in favour of granting an injunction. I say so because the electronic evidence and the conduct of the defendants make it clear that they are making false statements and contention with respect to the situation of the suit property. There is no counter-evidence with regard to such a piece of evidence which is laid down by the plaintiff. The overall history of the previous litigation between the defendants and the present situation makes it clear that there is an approachable road which passes from Schedule B to Schedule A property as contended by the plaintiff.

33. If the injunction is not granted then it is certain that great inconvenience will be caused to the plaintiff. The arrangement of the

laterite stone in a temporary manner also shows that such arrangement is made only with the intent to create confusion and to make wrong submissions. However, again making it clear that the electronic evidence has clearly established the said facts. If the injunction is granted as prayed then no inconvenience will be caused to the defendants.

34. The development so made by the defendant appears to be made only with the intent to oppose the plaintiff and the order of this court. In such a situation, if the injunction is not granted then the irreparable loss will be caused to the plaintiff as the prima facie evidence to show that he wants to cultivate shrimp farming in the Schedule B property. He has heavily invested in that. The loss is not only with respect to monetary terms but it is also with respect to the enjoyment of the property which is own and possessed by the plaintiff. Therefore, such loss to the enjoyment of property is certainly irreparable.

35. On the contrary, it appears that there will be no loss to the defendant as the road existed when the court granted an injunction. The temporary arrangement of laterite stones can be easily removed without even damaging them. Therefore, there will be no loss to the defendants. The Video of the suit road is of such length that a person can walk through it in about 3 minutes. This shows that the land covered by the road is not of such length which will create loss to the defendants. In fact, it cannot be forgotten that the road was in existence for many days and was used by the defendants also. Thus if an injunction is not granted then an irreparable loss will be caused to the plaintiff.

36. It is a settled law that temporary mandatory injunction shall be granted only in real cases and as an exception. The case in hand appears to be an exceptional case as there is no other option but to pass a temporary mandatory injunction. I say so because the impediments appeared to be

made only to oppose the right of the plaintiff and after the suit came to be filed and orders were passed. Once the order of Hon'ble District court passed there were no restraining orders against the defendants and thus it created a chance for the defendants to change the circumstances with regard to the suit property. Therefore, it appears to be a fit case to grant a temporary mandatory injunction.

37. The right with respect to the use of the road and the existence of road will certainly take a considerable time for its final adjudication. In the time being if the right of the plaintiff is not protected then it will cause loss to him. Therefore it is necessary to protect his rights.

38. Thus it can be seen from the Screen shorts of the video taken by the plaintiff which is produced on record at ex. 129 and the screenshots from the video taken by the court commissioner the video so produced by the plaintiff clearly shows the existence of the road from point A to point B. It also appears from the said video that the laterite stones compound wall so created by the defendants appears to be a temporary arrangement. It is not a fixed compound wall. The circumstances altogether show that such alternation made by the defendant only to defeat the right of the plaintiff. The electronic evidence is so clear that this court need not felt to reappoint the court commissioner. The screenshots from the video during the court commissioner also show the conduct of the defendant no. 15 and 76 which appeared to be disrespectful. I say so because even after appearing in the suit they did not file their say in time. Their oppose to the court commission appears to be baseless. If at all the court commission would have been completed, then there would have no loss to them. I say so because the court commission was appointed only to respect the road in dispute and to see if it does really exist. However, the oppose made by the defendants seems to be done only on the ground that the real facts which

actually got disclosed due to the video filed by the plaintiff should not come on record.

39. Therefore, it prima facie appears that the defendant no. 4 has made arrangement of the laterite stones only as a temporary structure and upon the road which existed at that place as shown in image 9 and which ended to the opening of Schedule A property as shown in image 13 hereinabove. Therefore her conducts appear to be opposed to the right of the plaintiff and nothing else. The screenshots make it clear that her so-called compound wall was never in existence when the suit came to be filed and even prior to that. This court came to such conclusion from the altogether facts of this case, the conduct of the defendants and on the basis of evidence produced from time to time. Hence I pass the following order.

ORDER

1. The application of plaintiff is allowed.
2. The defendant no. 4 is hereby directed to remove the temporary compound wall as shown in image no. 9 and 13 hereinabove, made by arranging laterite stones which appear to be made at the commencement of the road at point where the Schedule B property joins Schedule A property and the compound wall before her house by arranging laterite stones as shown screen shorts of videos hereinabove. He is also directed to remove any other impediment created by him on the said road.

3. The defendant no. 4 shall obey this order within 20 days. If the defendants do not obey such order then the plaintiff is entitled to get it executed through this court.

Date- 04/12/2019

(Vinayak D.Patil)

Civil Judge (J. D.) Vengurla.