

Order below Exh. 84 in Regular Civil Suit no. 28/2018

Chetan Samant

Versus

Mangesh Tulaskar and others

This is an application filed by the Plaintiff inter alia praying for interim temporary and mandatory injunction against the Defendants.

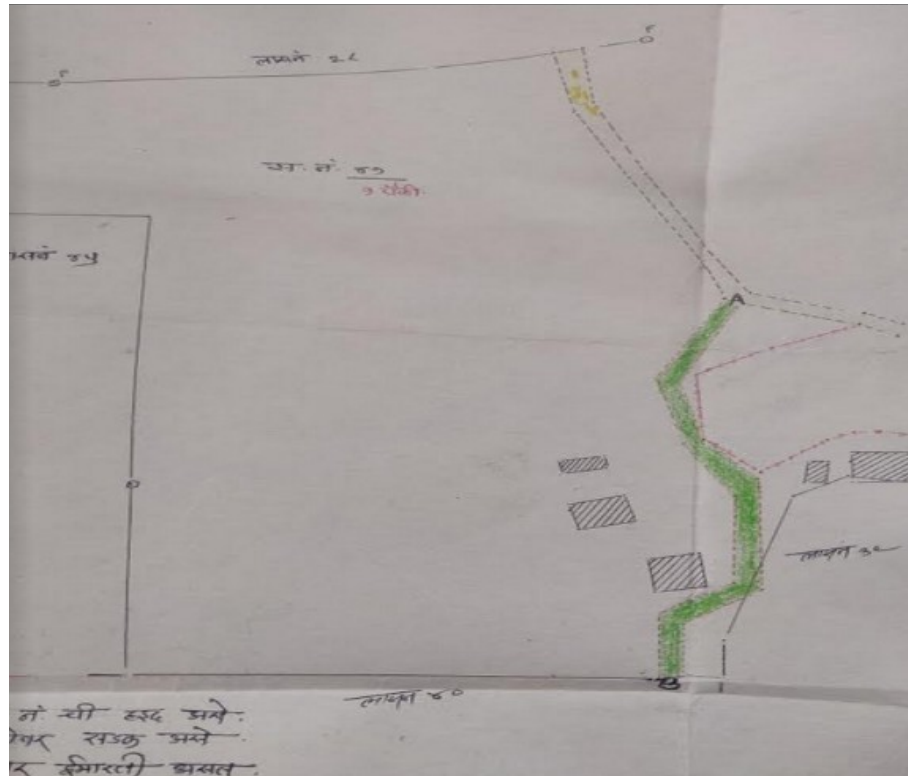
Subject matter of the suit-**Schedule A**

Survey no. 40 Hissa no. 1A and 1B admeasuring 1-39-90 H.R. pot kharaba 0-22-75 having a valuation as Rs. 7/-

Schedule B

Survey no. 41 Hissa no. 1 admeasuring 6-28-0 H.R. pot kharaba 2- 12-0 having valuation as Rs. 2.50/- are the suit properties.

Hereinafter referred as Scedule A and Schedule B property for the sake of convenience. Photograph of map along with plaint



2. The plaintiff has filed the descriptive map along with the plaint as above. It is the case of the plaintiff that a road commences from point A to point B as shown in the map. The said road passes from the Schedule B property and joins Schedule A property. It is about 10 feet in width. The map shows that it is a road available to approach Schedule A property. The said road is joined to a sub tar road which comes from Parule Bazar to Makdamwadi.

3. The plaintiff further contends that the property in Schedule A was purchased by him by registered sale-deed on 2 August 2005 from Hareesh Tulaskar and Pradip Prabhu. Since then he claims to be in its possession. He conducts shrimp farming in the said Schedule A suit property.

4. The Schedule B suit property is named after various defendants. However, the property is tenanted. Therefore, each of them has their specific possession as their tenancy right is different. The specific portion of their property is sold to the defendants after completion of 32G proceeding. The road which is claimed by the plaintiff passes through the specific tenanted portion which belongs to defendant no. 1 to 22.

5. However, the plaintiff has made all the defendants a party to this proceeding as he has claimed easement by prescription and easement by lost of grant and customary right.

6. In such a situation he claims that the Schedule A suit property is adjacent to Schedule B property. The Schedule A property is surrounded by Karli creek. He further contends that Grampanchayat Parule Bazar has constructed the protection wall surrounding the Schedule A property and other properties which are adjacent to the creek. The said wall is about 2-5 meters in height and 2 meters in breadth. Thus he claims that he uses the road as shown in the map to approach the Schedule A property for more than 20 years. The road shown in yellow colour (major road) is said to be a

gram panchayat road which joins Parule bazar and Makdamwadi. He claims that the gram panchayat Parule Bazar has recently spent amount for its maintenance and the said major road is recorded in the Form no. 23 of said grampanchayat.

7. The green road which is shown from point A to point B commences from the said major road and ends to point B which is Schedule A property. (hereinafter referred as suit road for the sake of brevity) The plaintiff claims that he, as well as his predecessor in title, are enjoying that road for more than 20 years and in the knowledge of defendants, without their objection. He added that even the defendants are using the said road for many years.

8. It is further contended that the existence of the road can be seen from the dispute which arose between the defendant no. 1 and defendant no. 2 to 5. In that regard the defendant no. 1 had filed the suit bearing no. 4/2011 for the sake of perpetual injunction. (referred to as the previous suit hereinafter). In the said previous suit the defendant no. 3 to 5 (also the Defendant in the present suit) filed their written statement and admitted the existence of the suit road along with its width at 10 feet. In addition to that, they filed one hand sketch along with the written statement/counterclaim and claimed declaration about the said road as easement by necessity, easement by prescription and customary right. In addition, they even claimed for an injunction.

9. In the meanwhile, a court commissioner was appointed in the said previous suit to bring on record the actual condition of the road. Accordingly, in the map drawn by Deputy Superintendent, Land Record the existence of road is clearly shown. Therefore, the plaintiff claims that the defendants are estopped from denying the existence of road.

10. In such circumstance, because of the map the defendant no. 1 lost his

interest in the previous suit. Therefore the previous suit, as well as the counterclaim, came to be dismissed.

11. Hence, the plaintiff contends that the 'suit road' is in existence and the same road was used for the transportation of raw material which was used to construct the protection wall adjacent to the properties to the creek. In addition to that, he claims that after purchasing the Schedule A property he has conducted the work of ponds and sluice gate in the Schedule A property and for its construction he has used the same road. In addition to this, he has used said road for transporting the raw material and other material required for his shrimp farming. Therefore, he claims that he has his right of easement by prescription, easement by lost of grant and customary right with respect to said road.

12. In such background, in the last week of November 2017, the defendant no. 1 intimated to the plaintiff through defendant no. 2 that, the plaintiff shall not carry out any kind of transportation from the suit property. Therefore, the plaintiff and his father met the defendant no. 1 and made him understood. As a result, the defendant no. 1 kept mum till next 4 to 5 months.

13. However, recently that on 21/4/2018, when the plaintiff went in the Schedule A property for the sake of excavating soil from the ponds in it, the defendant no. 2 obstructed their way. When they inquired with her she told the plaintiff that, they are going to cultivate mango grafts in the suit property. Her brother has told her to close the road by constructing a compound wall. The plaintiff and his father tried to make her understand her but she was not in a mood to understand them. Hence, as a result, the plaintiff approached this court by filing the instant suit. They were successful to get exparte ad interim relief.

14. The defendant no. 1 to 5 were served notice and the copy of the

exparte ad interim relief that on 8/5/2018. When the plaintiff's father who happens to be his power of attorney also, was travelling to the suit road along with his J.C.B. at that time the defendant no. 15 said that he will not obey the court order and thereby restrained the plaintiff by raising obstruction by using stones or arranging stones over the suit road. The defendant no. 15 minimized the suit road to the extent that only a person can pass through it. After that, this court allowed the interim application and ordered to remove the obstruction raised by defendant no. 15. However, the defendant no. 1 challenged said order before Honb'le District Court. The Honourable District court was pleased to s aside the order of this court and directed the plaintiff to file a fresh application and liberty was given to this court to pass an appropriate interim order.

15. Plaintiff contends that in spite of the said situation and when the interim order of this court was in force the defendant no. 15 breached the order of this court and raised a compound wall at point A and minimized the said road to the extent that only one person can pass through it. The plaintiff claims that the act of the defendant no. 15 is supported by the defendant no. 1 to 5, defendant no. 16 to 19. As a result, the suit road is now closed for the purpose of transportation. It resulted in the loss of plaintiff's shrimp farming season. The plaintiff requires to use the suit road for the purpose of transporting J.C.B., tempo, tractor from the suit property.

16. In such a situation it is necessary that the obstruction raised by the defendant no. 15 at the point A in Schedule B property shall be removed. The plaintiff also claims that he has raised loan from Syndicate Bank of India Parule for the sake of shrimp farming. He is at an irreparable loss because of the act of the defendants. As a result, he has prayed for temporary injunction restraining the defendants from causing an obstacle in use of the road and a mandatory injunction for removal of the obstruction raised by defendant no. 15. He has also claimed for a temporary injunction

restraining the defendant no. 1 to 5 and 15 to 17, 19 and their agents or anyone on their behalf so that they shall not create any obstruction against his use of the road to approach Schedule A property till the disposal of the suit.

Defendants' case

17. The defendant no. 1 has filed his say to the instant application at exh. 109. He has strongly resisted the case of the plaintiff. The defendant no. 1 has admitted the description of the suit properties. However, he has denied the existence of the road as shown by the plaintiff from point A to point B. He has denied the entire contention raised by the plaintiff.

18. 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 for many years. The said property also has house belonging to many other co-sharers.

19. 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.

20. 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 a false statement that there is the existence of road as per contention. He has filed a false map along with the suit. The

road is shown in the map at exh. 21 in Reg. Civil Suit no. 4/2011 and the road is shown by the plaintiff are different. It is the contention of the 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 diminish before the counterclaim came to be disposed of. It is further contended 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 the 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.

21. 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 (dPpk jLrk) which ends after a certain distance. The said road does not touch or ends to the boundary of Schedule B property. The road as 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.

22. 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 a 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.

23. 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 (dkV;kaps daaqi.k) through his father on the southern side of Schedule B property, the contention of the plaintiff that there exist a road appears to be afterthought fact.

24. 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 counterclaim, 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.

25. 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 route. The plaintiff owns a fibre 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 sell out the property. However, the purchasers 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 an illusion that a road existed even prior to the time

when the property was purchased by the plaintiff.

26. It is further contended that after this court granted ex parte ad-interim relief in his favour, 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 Vishnu Tulaskar(Defendant no. 15) They asked as 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 that's why they want to construct a wide road. However, the said order was never shown to Balkrishna Tulaskar and Vishnu Tulaskar (Defendant no. 15). As a result, the plaintiff and his father approached Nivati police station. Nivati police called Balkrishna Tulaskar and Vishnu Tulaskar(Defendant no. 15) at the police station. However, as it was not possible for Vishnu (Defendant no. 15) to go to 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 the police station till 10.00 p.m. Some signatures were also taken but at even at that place the order of the court was not shown to them.

27. Hence, the defendant claims that it is false to say that Vishnu Tulaskar (Defendant no. 15) 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 Vishnu Tulaskar(Defendant no. 15). 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.

28. The defendant admits the existence of road which commenced from Parule Bazar to Makdamwadi. However, they have denied the facts about their repair works. The defendants have contended that the boundaries as mentioned in the sale deed of the plaintiff are incorrect and that's why the plaintiff has not produced the sale deed. The incident as contended by the plaintiff which took place in 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 an 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 a party to the suit then they would have objected the plaintiff. However, the plaintiff took a disadvantage in such a fact and avoided to make them a party. The plaintiff has intentionally mentioned the wrong addresses. So as to avoid service over said defendants. Therefore, on the same count, the application of the plaintiff is liable to be rejected as per the defendants.

29. Hence, it is contended that the balance of convenience is tilted in favour of the defendants. However, if the defendant fails 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 the cost of

Rs. 20,000/-.

30. The defendant no. 2 and 5 filed their say at exh. 110. The defendant no. 15's say is at ex.179. It appears from the record that the other defendants have not filed their say with respect to this application. It appears from the record that, the suit has proceeded exparte against defendant no. 16, 17 and 19. Defendant no. 3 has not filed his say.

On the basis of the above-mentioned facts and circumstances, the following points raise for my determination. I have recorded my findings upon them followed by detailed reasoning.

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

31. I have heard arguments advanced by respect Advocate on behalf of the parties at length. They have argued as per their case and contentions in the pleadings and the evidence produced to its support.

As to point no. 1 to 3

32. It appears from the rival pleadings that the ownership between the parties is not disputed. It is also not disputed that there is a road from Parule bazar to Makdamwadi. It is also not disputed that from the said road the rough road commences and enters in Schedule B property.

33. In light of the above-mentioned facts, it appears from the record that the 7/12 extract at ex. 7 to 10 shows the respective ownership of the parties. The various factual aspects can be segregated under the following sub-points-

Existence of Road

34. As it appears from the rival pleadings itself that, the road from Parule Bazar to makdamwadi is an undisputed fact. It is also not disputed by the contesting defendants that the rough road commences from the said road. However, it is their contention that the said road comes to end where the house of defendant no. 1 to 5 is situated. To support this contention the plaintiff has firstly relied on the map filed along with the suit. The map shows the existence of a road as per the say of the plaintiff.

35. The plaintiff has relied on the previous litigation between the defendant no. 1 to 5. The copy of suit bearing no. 4/2011 at ex. 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.

36. 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.

37. 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 निळया 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 बनेजवउंतल 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.”

38. The said defendants in the previous suit thus filed a 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.

39. 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 निळया रंगाच्या भागाने दर्शविलेल्या सभोवर जो गडगा आहे त्या गडग्याच्या 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. ”

40. 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.

41. 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.

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



43. 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.

44. 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.

45. 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.

46. 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.

47. When such is the situation then prima facie question remains is that, what is the alternate way available to the owner of Schedule A property i.e. the plaintiff ? The plaintiff has filed google map to prima facie substantiate such facts. The coordinates of the map are provided upon it. In such circumstances this court feels that the use of technology can be done for the sake of fact finding at this level. Google map is based on the technology of google corporation which can be assessed by use of world wide web and by anyone. Therefore, by using such coordinates the suit property was traced down. The following image appears to be with respect to the suit property.



Schedule A property

1:

48. It can be seen here that the Schedule A property is surrounded by a water body from the three sides. There appears to be no approachable road to the suit property.

49. To counter the fact about the approachable road the defendants have relied upon the affidavits of two people out of which one is the previous owner of Schedule A property. He has made a statement that there was no approachable road to the property. He used to use a boat to approach the Schedule A property and thus the said property was sold by him in such peculiar circumstances. It is his contention that there is no easementary way to approach the Schedule A property. However, it is pertinent to note that, copy of sale deed at exh. 47 shows that the property was sold along with easementary right. If the affidavit of the defendants supporting person is said to be true then a question arises as to why there was a disclosure of easementary right in the sale deed. Apart from this, it is pertinent to note that the documentary evidence about the development to be carried out by the plaintiff are after the said sale deed. Therefore, the plaintiff has shown a more probable prima facie evidence than the defendants and particularly the said affidavit. Hence, such affidavits in support of the defendants cannot be believed.

**The topography of Schedule A property and activities
carried out by the Plaintiff**

50. It appears from the gat book map at exh. 10 that, the Schedule B property is adjacent to Schedule A property. The Schedule B property is covered by water from three sides. The other portion which is adjacent to land shows that survey no. 39 and survey no. 41 are adjacent to it. From considering the prima facie situation with respect to the suit properties the court commission map so drawn in R.C.S. no. 4/2011 can also be taken into consideration. The said map shows that till a particular point the road is

shown in red ink and there is no kind of obstruction upon it.

51. In the line of the above facts when the description and the topography of the suit property are not been disputed, then the question remains how can a person who is an owner of Schedule A property can approach in his property.

52. It is apparent from the record that the suit property is peninsular in area. It is covered by water from three sides. It is the case of the plaintiff that, he has cultivated shrimp farming in the Schedule A property. To support this contention he has produced a certificate of registration from the coastal authority at exh. 4/5, which is in the name of the plaintiff. It is registered in the year 2007. At exh. 4/6 there is an application for renewal of shrimp agriculture, at exh. 4/8 there is an aqua farm enrollment card issued in the name of the plaintiff which is dated 27/3/2018. Therefore, these facts show that the plaintiff was conducting shrimp agriculture in the Schedule A property. The plaintiff has also produced a letter given by Collector at exh. 60/1, which is in respect of C.R.Z. and the suit property, at exh. 60/2 there is a letter issued by collector dated 24/10/2017 in favour of plaintiff with respect to the visit in the suit property, at exh. 60/3 there is a certificate of renovation given in the name of the plaintiff, at exh. 60/4 there is a resolution passed by grampanchayat Parule with respect to the construction of protection wall around the land beside the creek. Similar kind of applications are filed at exh. 56/1 to 56/3. These documents altogether show that a protection wall was constructed along with the creek area.

53. As per the case of the plaintiff, the material for the construction of the said protection wall was also carried from the road as contended by the plaintiff. Otherwise, it is impossible to raise such construction. The defendants are silent with respect to this said of facts. Therefore, prima facie it appears to be a probable case that protection wall surrounding the

creek which covers the Schedule A property was constructed and its material was transported from the road as contended by the plaintiff which goes from Schedule A property.

54. The documents with respect to the construction of said protection wall are at exh. 56/5 to 56/6. There is one more document about the loan taken by the plaintiff for the sake of shrimp farming. It is shown that the plaintiff took a loan of above 15,00,000/- in the year 2006 from the State Bank of India for the purpose of shrimp farming. This letter corroborates in the case of the plaintiff with respect to farming activities conducted by him. There is one more letter given by one Government contractor, which is in the year 2006. It shows that an amount of Rs. 5,00,000/- was expended by the plaintiff for the purpose of excavating, approach road, load dumper, tractor etc. by use of J.C.B. Machine. Thus, this letter shows that for the purpose of shrimp farming use of heavy machines was made by the plaintiff.

55. When such is the situation then question arise is that, how can such machinery or activities are conducted in the Schedule A property, if it does not have to approach road? The defendants are even silent on this point. Per contra, their contention is that the plaintiff has a fibre boat and he has conducted his activities by virtue of said boat. But it appears to be higher in improbable that heavy machines are transported by waterways in the suit property and the work of constructive the protection wall and the activities of shrimp farming are conducted by use of the waterway. Therefore even these facts establish the prima facie case in favour of the Plaintiff.

Co-sharers in Schedule A property

56. It is pertinent to note here that the Schedule B property has various co-sharers which are in fact tenants. It is required to be understood that when a property is tenanted then tenant enjoys a particular portion of land from the landlord. As it appears that some of the tenants or co-sharers like

the contesting defendants have constructed their house the area so possessed by them is a specific area. Therefore, only those person would be related to the road passing through the Schedule B property, who have their land beneath the road or from whose land the said disputed road goes through. Therefore, the contesting defendants against whom the injunction is prayed are appropriate parties for the sake of this application and there is no requirement to hear all the co-sharers. I say so because some of the co-sharers might of have his property at a remote place from where the disputed road is said to be contended by the plaintiff.

Appointment of the court commission and behaviour of the parties

57. It is a matter of record that the defendant no.1 gave application at exh. 112 and prayed to appoint court commissioner for the sake of ascertainment of the disputed road. A similar application was given at exh. 113 by defendant no. 2 to 5. By a common order, this court appointed an Advocate as a court commissioner and gave directions as to see, whether a road passes through the property as contended by the plaintiff.

58. Accordingly, the court commissioner visited the spot. It also appeared that by that time when the order for appointment of court commissioner was made the notice of the present application were served upon the defendant no. 3, 4, 16, 17, 19 and the defendant no. 1 to 5 had filed their written statement. It is pertinent to note here that, as per the summons report at exh. 120 and 121 the suit summons and the notice of the instant application was served on the defendant no. 15 as per order 5 rule 20 by affixing a copy of the summons on the conspicuous part of the house. An affidavit in its support is filed at Exh. 123 about service of the summons and appropriate address. The summons report shows that it was affixed for the order 5 rule 20 and in presence of one person name as S.S. Gholekar. Accordingly, on 18/3/2019 exparte order was passed against the defendant

no. 15.

59. The court commissioner visited the spot on 30/5/2019. However, it appears from the report at exh. 138 that some of the people opposed the court commissioner and as a result, the court commissioner was unable to conduct his work. He has reported that the defendant no. 15 and one Ramkrishna Ganpat Kambli means the defendant no. 76 obstructed the work of court commissioner. Their objection was based on the ground that the suit property is common and thus unless and until all are issued notices about Court commissioner they will not allow to work. However, it is pertinent to note that the present interim application is not filed against the defendant no. 76. The defendant no. 76 appeared in this suit on 7/2/2019 through his advocate. It is shown that even he was well aware with respect to the pending suit.

60. From the above facts and circumstances, it appears that in spite of the facts that summons was served to the defendant no. 15. He made the wrong submission before the court commissioner and has opposed to the order of this court without any proper reason. This shows inappropriate conduct on behalf of the defendant no. 15.

61. The record of this case shows some other facts with respect to the conduct of defendant no. 15. The plaintiff moved an application at exh. 33, contending that the defendant no. 15 who was not a party at that time. He opposed the plaintiff who was working as per the order of this court. Therefore, the plaintiff demanded to demolish a compound wall which was constructed by the defendant no. 15. This court observed in the said order that, the defendant was 15 was well aware of the fact that some order has been passed against him with respect to his property. In fact, it cannot be forgotten that at that time it was the contention of the plaintiff that the defendant no. 15 obstructed the way of the plaintiff by arranging some stones on the road. The photographs to that effect were filed at exh. 34.

The said photographs are as under.



62. Therefore, said prima facie photographs it appears that some laterite stone were so temporarily arranged and the road was obstructed by keeping a small opening which may be of about 3 feet. It is also pertinent to note that the plaintiff filed a criminal case against the defendant no. 15 on 8/5/2018. From such facts it appeared that it is an obvious matter of prudence that the defendant no. 15 got knowledge that something is happening with respect to his property. However, even then he has not

paid any heed to approach this court.

63. I say so because it appears from the record of this court that, this court received a writ from Hon'ble Bombay High Court that, the defendant no. 15, who was not party at that time filed a writ petition before Hon'ble Bombay High Court inter alia contenting that this court ordered to demolish his compound wall even then he was not party to the suit.

64. I am considering this conduct of the defendant no. 15 in this order to show that he was able to approach Hon'ble High Court on 19/12/2018. However he was not able to approach this court since when he had the knowledge that something is going on with respect to his property. He was having sufficient time since the incidents which occurred after exparte ad interim order of this court was passed. It also appears that he has made a wrong submission before Hon'ble High court by stating that his boundary wall was directed to be demolished by this court. However, It is clear from the above image that this court ordered to remove such temporary construction which did not appear to be a boundary wall.

65. Therefore, it is the observation of this court has the defendant no. 15 has dared make a wrongful submission before Hon'ble High Court. Unfortunately, he was successful to get an interim relief but then the petition before Hon'ble High court is disposed in view of the order passed by the Hon'ble District Court which said aside the order under exhibit 36 passed by this court.

66. Therefore, the facts all together shows that the defendant no. 15 who is in hand in glove with the defendant no. 1 to 5 is mere opposing the order of this court. He did not availed opportunity rendered by this court. And after a considerable period made an application to file his written statement and his say. This conduct of the defendant shows that they just want to protract the matter and cause delay to it. The oppose made to the court commissioner also appears to be same tactics. Therefore, this court thinks

a proper to not to waste any time in such activities as the Plaintiff filed electronic evidence at ex.129 on 26.03.2019 which is filed before the Court commissioner was appointed.

Facts appearing from electronic evidence on record

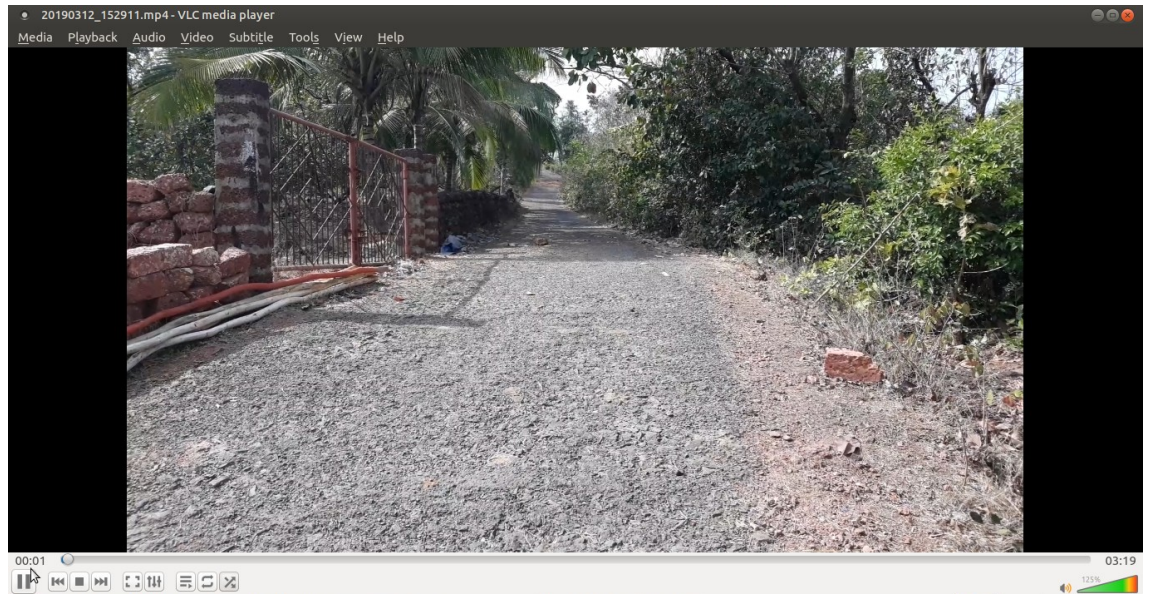
67. The following photo shows situation when the temporary injunction application at ex. 5 and 33 were heard. At that time following was the condition of the disputed road. The obstacle created by the Defendant no. 15 was shown to be as under as per the photogrpahs:-



The following image no. 1 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. 129. The following are the screen shots taken at various juncture which can be seen from the time slot of the video

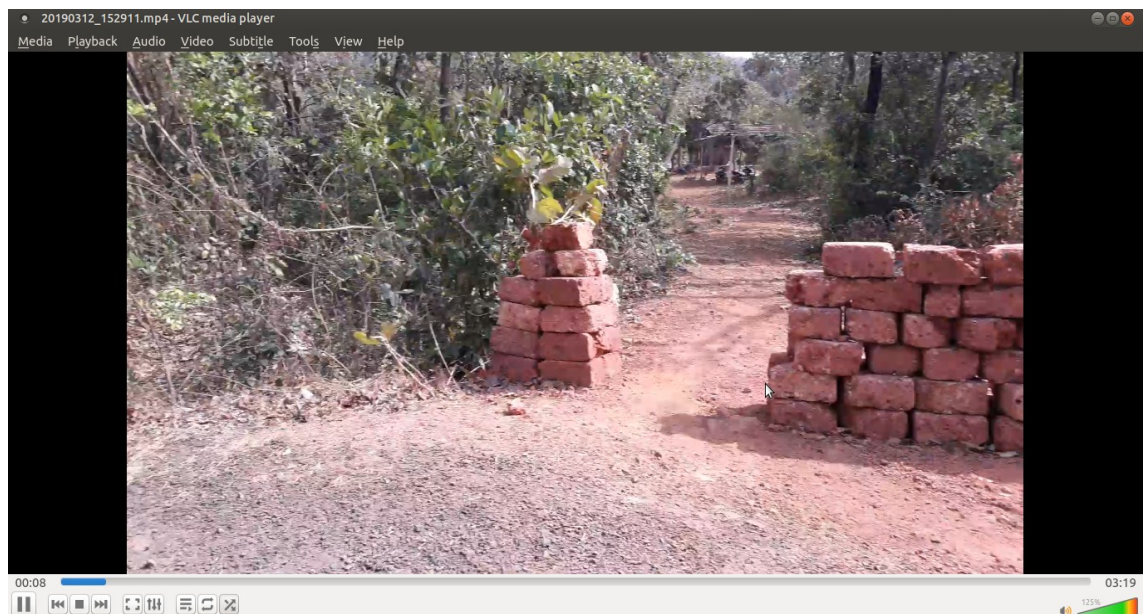
Image no.1

P.t.o...



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

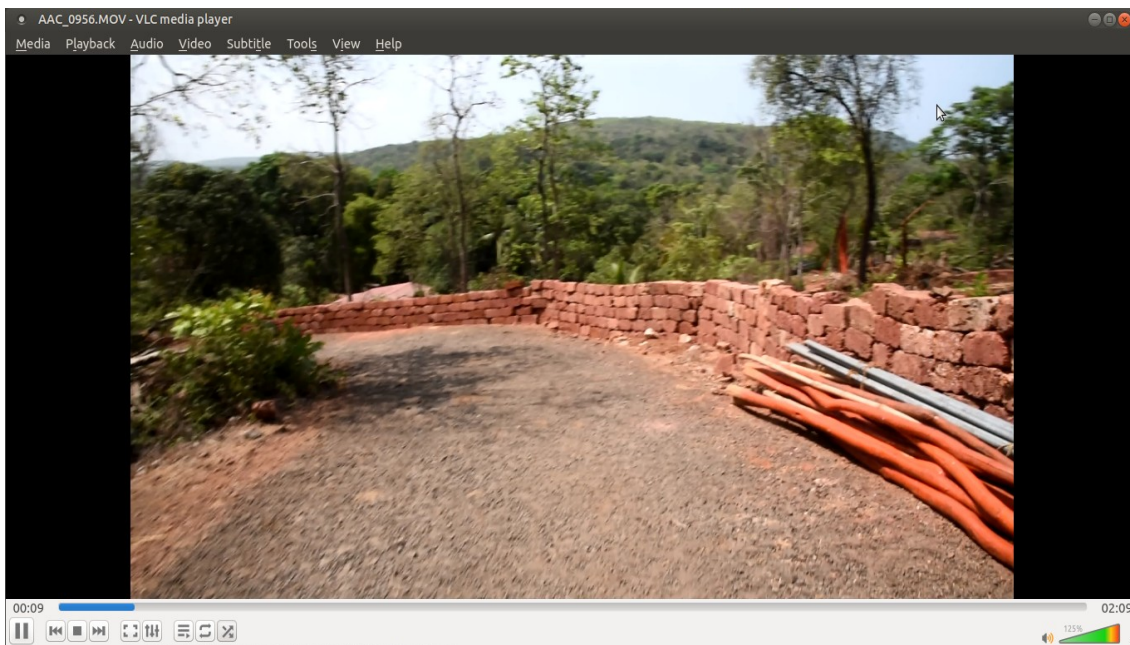


This image no. 2 is about the point A as shown by the Plaintiff in the Map. The screen shot of this video is taken at the time a temporary arrangement of laterite stone was contended to be made by the Defendant no. 15 when the application at ex. 33 was decided. The photograph with

that reagrd was produced by the Plaintiff at the time of deciding such application which is produced on record and is shown hereinabove.. is resembling with the situtation which appears from the video reacording made by the Plaintiff and filed at ex.129 .Therefore it can be seen that there was no arrangment 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

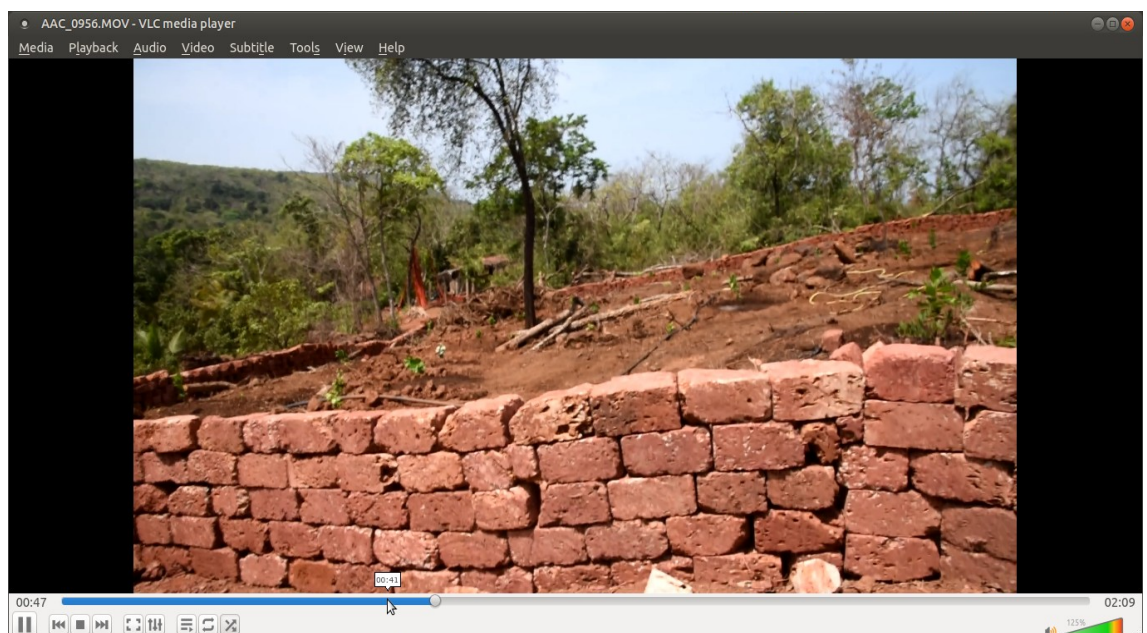
The following screen shots are taken from the video taken when the Court commissioner visited the spot on 09.05.2019. This photogrpah shows the improvement being made by the Defendant no. 15 at the spot A as show in the map and as shown in the previoua photographs hereinabove.



The difference in last images can be seen is that the Defendant no. 15 has now raised a complete impediment, it cannot be forgotted 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. These facts show the conduct of the Defendants. But it can be seen that it is just an arrangement of laterite stones and not a permanent structure.

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

P.t.o...

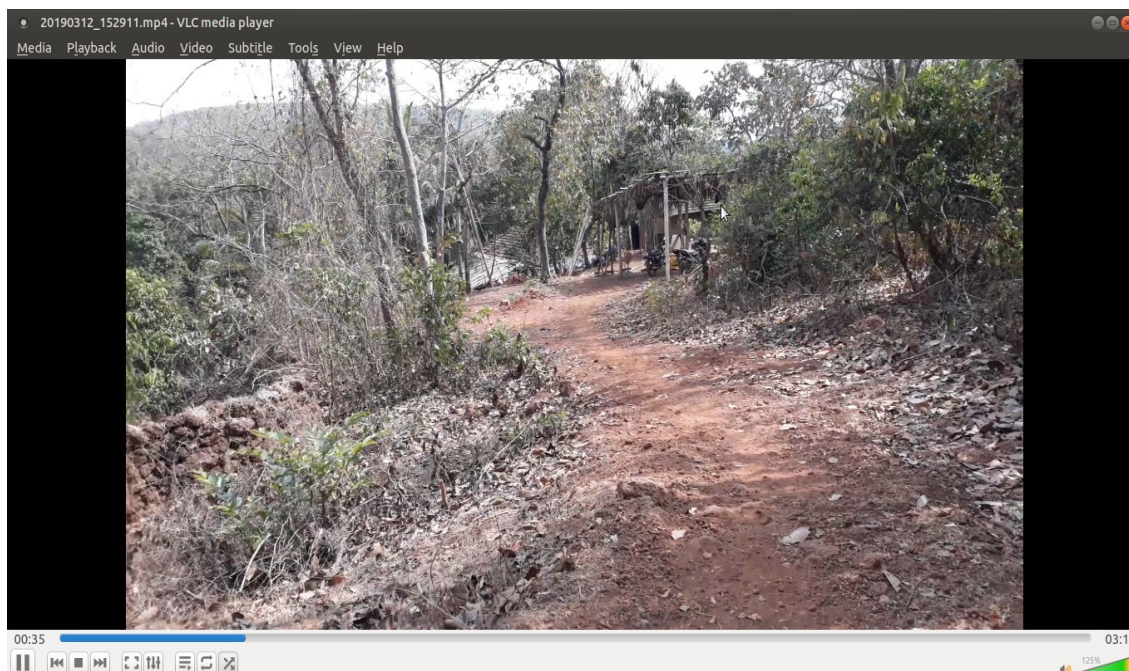
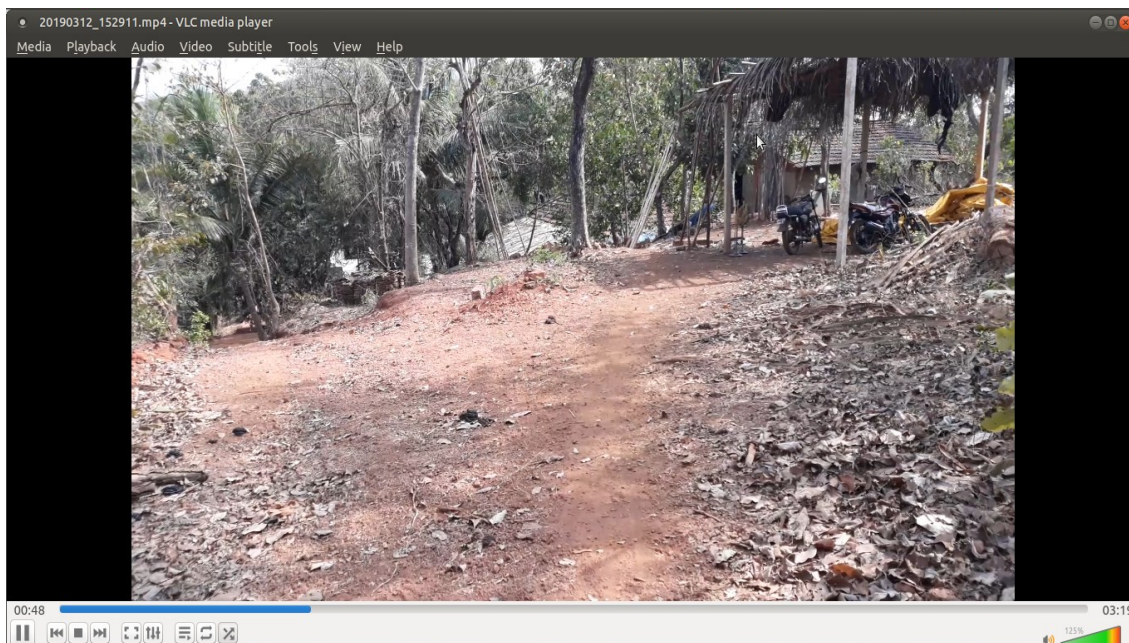


Image no. 6



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 seen that the

road then turns towards the left side.

Image no. 7

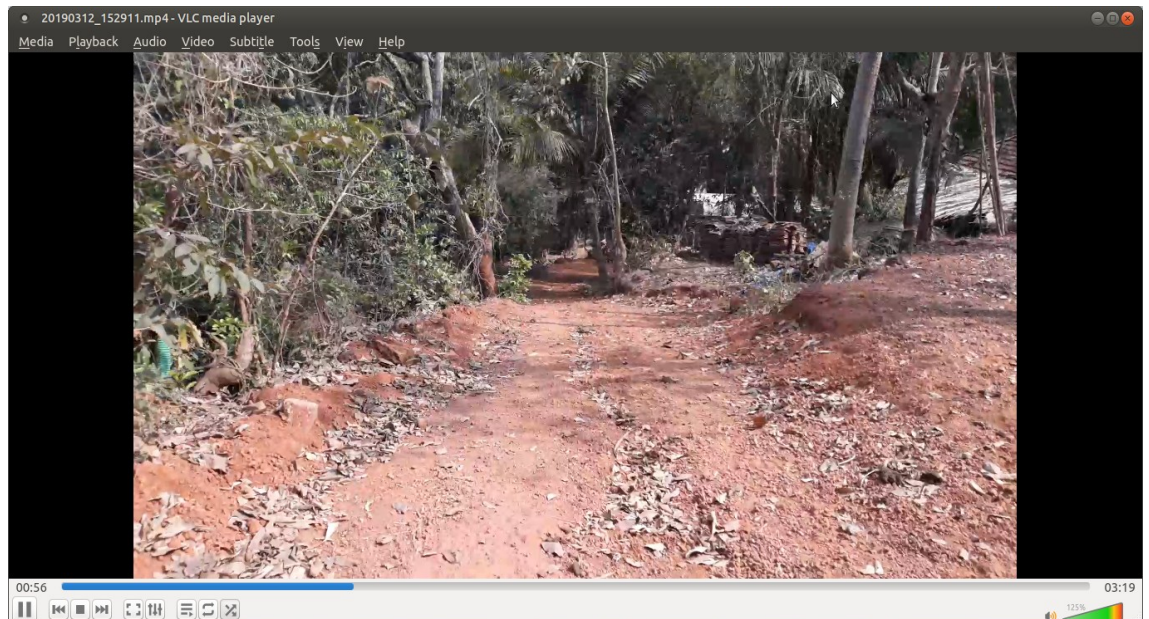
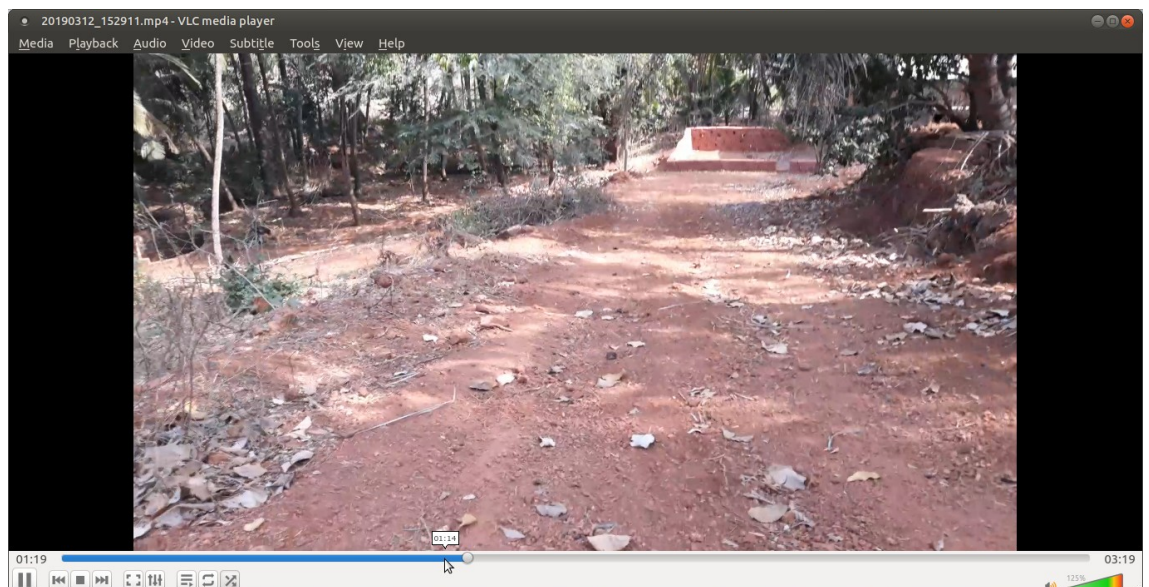


Image no. 8



At this 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

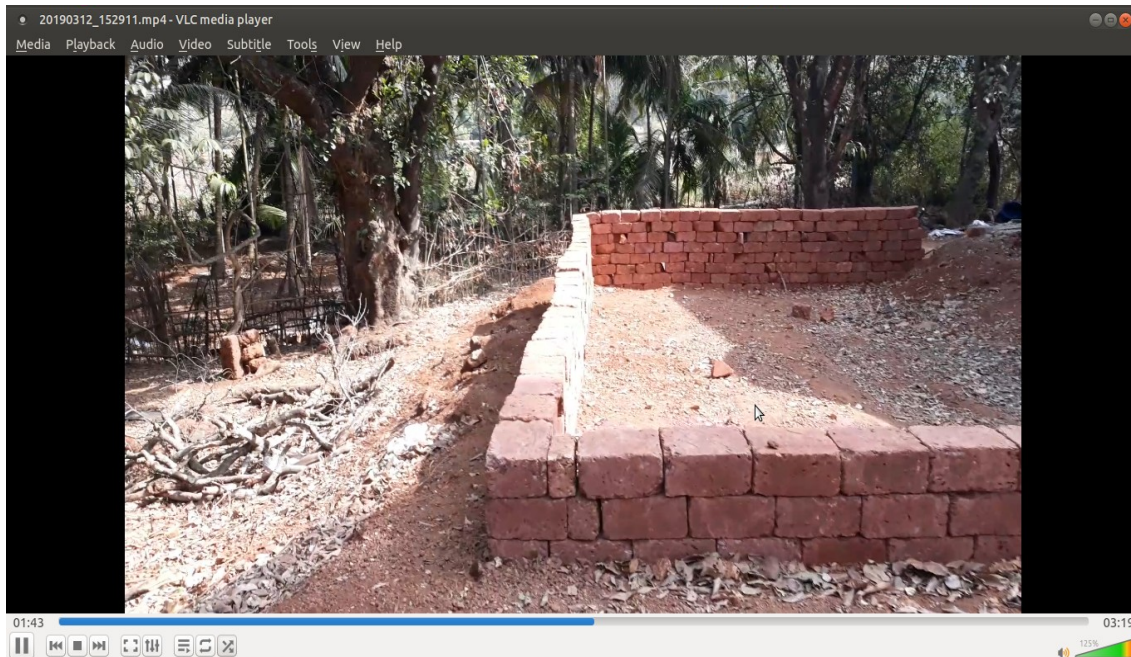
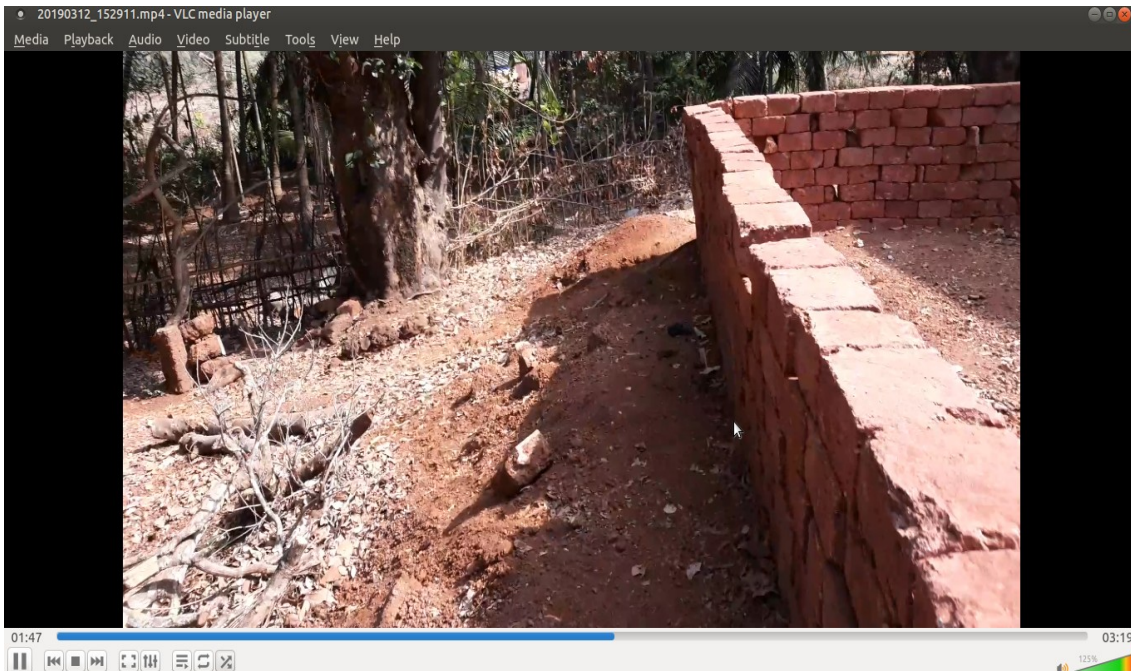


Image no. 10



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

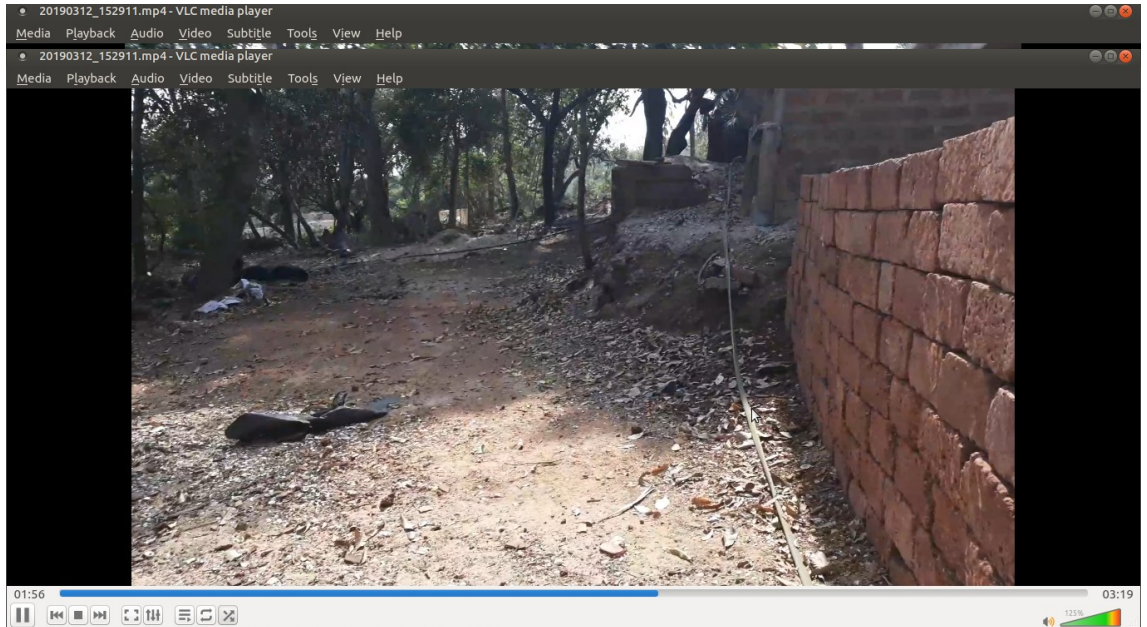


Image no. 12



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

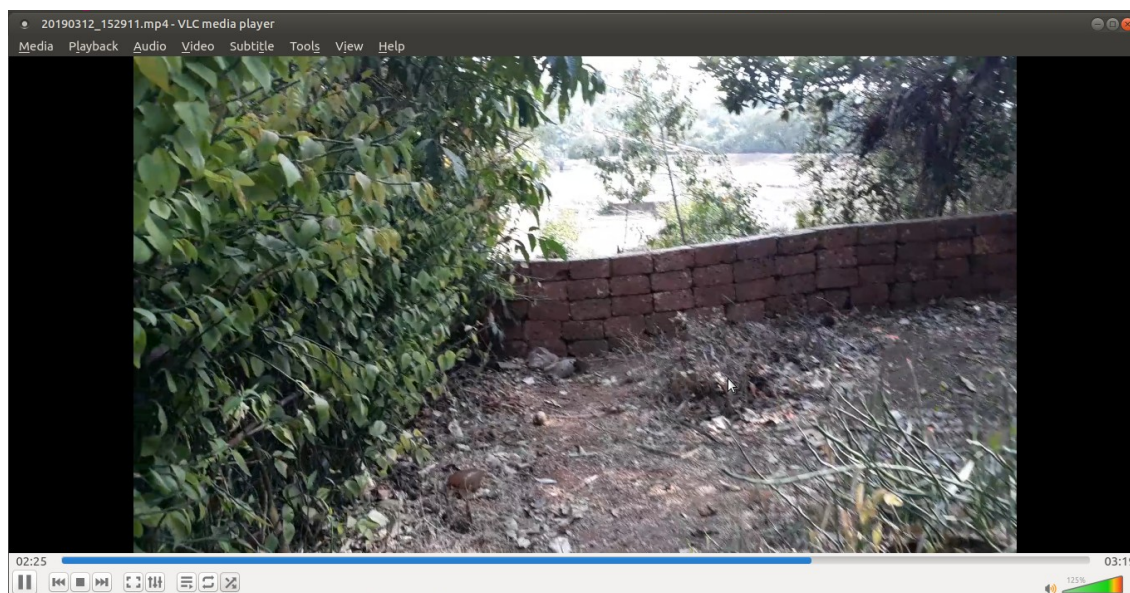


Image no. 14



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.

68. 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 feel 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





69. I say so because even after appearing in the suit they did not filed their say in time. Their opposition 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.

70. 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 she 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

71. 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.

72. 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.

73. Similarly, the balance of convenience lies in favour of granting the 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.

74. 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.

75. It cannot be forgotten that the defendant no. 15 appears to have changed the structure of the suit property to some extent. But that would not mean that the right of the plaintiff is gone. 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

76. 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 the injunction is not granted then the irreparable

loss will be caused to the plaintiff.

77. 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.

78. 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.

79. Therefore, I answer point no. 1 to 3 in affirmative as plaintiff has satisfied the same and pass the following order.

ORDER

1. The application of plaintiff is allowed.
2. The defendant no. 15 is hereby directed to remove the temporary wall made by arranging laterite stones which appears to be made at the commencement of the road at point A as shown in the map along with the plaint and appearing in image no. 2, 3 and 4 hereinabove. He is also directed to remove any other impediment created by him on the said road. The map along with the Plaint be considered as part and parcel of this

order.

3. The defendant no 1 to 5 and 15 to 17, 19 are hereby restrained from disturbing the right of plaintiff to use the road to approach his property which passes from Schedule B to Schedule A property, and they are also restrained from creating any kind of impediment through them or through their agents till the final disposal of the suit.

4. The defendant no 15 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.