



COMMON ORDER BELOW EXHIBIT 19, 34 AND 35 IN
R.C.S NO. 33/2019

The plaintiffs have moved application at Exhibit 34 for an order of status quo against defendant No.1 and applications at Exhibit 19 and 35 for appointment of court commissioner for inspection of the suit property.

02. Heard the learned advocate for the plaintiffs. Perused the applications and the documents filed by them.

03. It is contended by the plaintiffs that they are owners of suit property 1 and 2. It is adjacent to suit property 3 and 4. Defendant No.1 is having interest in suit property 4. On 30/06/2019 defendant No.1 started construction of a compound wall around the suit properties. The construction work is under progress. He is about to close the road in suit property 3 and 4 and destroy evidence about the existence of the road. Hence, the present applications.

04. The present suit is for declaration that the plaintiffs have an easementary right of way in suit property 3 and 4 alongwith a prayer for perpetual injunction against defendant No.1. The plaintiffs have filed photographs on record alongwith an affidavit in support. On perusal of the photographs filed today it can be seen that construction work with the help of labours and excavator machine is in progress. The photographs also reveal that material relating to construction is lying on road. There also appears a tar road near the construction. Thus, the photographs and the affidavit of plaintiff No.

2 prima facie shows that construction work is going on in the suit property. It is pertinent to note that a notice was issued to defendant No.1 on applications at exhibit 5 and 19. The notices have returned unserved with remark that defendant No.1 is out of town. The bailiff report at exhibit 20 dated 15/05/2019 shows that wife of defendant No.1 was present, but she refused to accept the suit summons. Similarly, the notices issued by registered post have also returned unserved with remark unclaimed. Upon considering the entire matter, I am of the view that the status of subject matter of the suit needs to be protected at this stage of suit. The subject matter in the present suit is the right to way from suit property 3 and 4. If the construction is completed, the right of plaintiffs, if any, will be affected. Also, the object of granting injunction would be defeated if the construction as alleged by the plaintiffs is completed. Hence, it is necessary to grant an ex parte ad-interim injunction against defendant No.1.

05. In respect of applications at Exhibit 19 and 35, it can be seen that already notice was issued to defendant No.1. But it is not served for the aforementioned reasons. In view of combined reading of Rule 7 and 8 of Order 39, ex parte order of appointment of court commissioner can also be granted. The appointment of commissioner is necessary at this stage to ascertain the exact position of construction and the road as alleged by the plaintiffs. Thus, the prayers in applications at exhibit 19 and 35 are also liable to be allowed in order to inspect the suit properties.

06. In view of the above discussion, I am of the opinion that

the applications are liable to be allowed. Hence, the order

ORDER

The applications are allowed as under-

Defendant No. 1 is hereby restrained by an order of ad-interim injunction not to make any construction over the suit properties till filing of his say to the application for interim injunction at exhibit 5.

If the say is filed by him in the meantime by taking the matter on board, the ad-interim injunction will be automatically extended to the next date of hearing.

The plaintiffs to make necessary compliance as per Order 39 Rule 3 of the C.P.C. in respect of defendant No. 1 and file an affidavit of compliance.

Shri. S.K.Jadhav is appointed as court commissioner to visit and inspect the suit properties and report about the present position of construction of compound wall and road therein returnable before 15/07/2019.

The plaintiffs shall deposit in the court a sum of ₹.4000/- as Court Commission Fees.

Issue commission writ accordingly.

Date : 01/07/2019
Place : Malvan

Bhanupratap B Chouhan
Civil Judge Junior Division

RCS NO. 33/2019
CNR NO-MHSI-07-000197-2019

:: 4 ::

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER/JUDGMENT.”

01/07/2019	Chandrakala Vasant Chavan
UPLOAD DATE AND TIME	NAME OF STENOGRAPHER
Name of the PO	Shri. Bhanupratap Chouhan
Date of pronouncement	01/07/2019
Order signed by PO on	01/07/2019
Order uploaded on	02/07/2019