



CNR No. MHSI07-000243-2021

Order Below IA No. 1/2021 (Exh. 5) in R.C.S. No. 55/2021

This is an application filed by the plaintiff praying for grant of temporary injunction against the defendants.

- 2) Heard learned Adv. Shri. S.S.Gavankar for the plaintiff. Perused the application and material produced on the record.
- 3) It is submitted on behalf of the plaintiff that, Malvan Municipal House No. 2420B owned by the plaintiff is situated upon a landed property bearing Survey No.229 (852) Hissa No.8. The said landed property (hereinafter referred to as the property 'A') is owned by her and is a dominant heritage. The landed property, situated to the east of her property 'A', bearing Survey No.226A Hissa No.11/C/3 (hereinafter referred to as the property 'B') is owned by defendants no.1 & 2 and is a servient heritage. A tar road, namely 'Phatak Road' is situated to the east of her property 'A'. In order to access the said Phatak road, she and her family members need to use a way passing through the property 'B' (hereinafter referred to as the 'suit way'). The suit way is five feet in width and forty five feet in length. The suit way is being used by her and her predecessor-in-interest continuously for more than 20 years. Hence, the right to such access is acquired by way of prescription. It is also submitted that, the suit way is the only way to have access from her house to the Phatak road and vice versa. Hence, such right of way is also an easement of necessity.

- 4) It is alleged that defendants no.1 and 2, have commenced construction of a compound wall to their property 'B'. The defendant no.3 is a contractor appointed to execute the said work of construction. The said construction of the compound wall is so situated in the middle of the suit way that it divides the suit way into two parts. One part being of four feet in width and the other being only one foot wide. Thus, the said work of the compound wall is causing an obstruction to the easementary right of way of the plaintiff. When the plaintiff confronted the defendants regarding their aforesaid acts, they replied that they would spare her one foot wide part of the suit way and would close the four feet wide part and occupy it. Hence, the suit.
- 5) It is further submitted that the four feet wide part of the suit way is still open. However, in case it is closed during the pendency of this suit, as the defendants intend to do, it would cause great inconvenience and irreparable loss to the plaintiff. Therefore, vide this application it is prayed that, until the suit is decided on merits, the defendants or any person on their behalf may be restrained by temporary injunction from causing any kind of interference in respect of the suit way and from raising any kind of obstruction either to the four feet wide part or to the one foot wide part of the suit way.
- 6) The learned advocate for the plaintiff has relied upon the judgment of the Hon'ble Supreme Court in the case of Dalapatkumar vs. Pralhad Singh (AIR 1993 SC 276) and the judgment of the Hon'ble Bombay High Court in the case of Sujanbai Haribhau Kakde vs. Motiram Gopal Saraf (AIR 1980 Bom 188) and argued that the plaintiff has a *prima facie* case.
- 7) On perusal of the registered sale deed dated 01/08/2011 produced at exh.4/5 it appears that the plaintiff has purchased the property 'A' and

therefore, is the owner of the same. Perusal of 7/12 extract at exh.7 shows that the name of the plaintiff is entered therein as occupant of class I in respect of the property 'A'. Perusal of house assessment list at exh.9 shows that the name of the plaintiff is entered therein as the owner and occupant of Malvan Municipal House No. 2420B. Perusal of 7/12 extract at exh.8 shows that the names of defendants no.1 and 2 are entered therein as occupant of class I in respect of the property 'B'. Perusal of the map in respect of the property 'A', issued by the office of Dy. S.L.R., Malvan produced at exh.4/6 shows that the landed property bearing Survey No.226 is situated to the east of property 'A'. In the present application in paragraph no.2 it is mentioned that the Phatak road is situated to the north of property 'A'. However, vide an affidavit at exh.16 the plaintiff has stated on oath that such mention is a printing mistake and the said Phatak road is situated to the east of her property 'A'. It is also stated on oath in the application, that in order to have an access to the said Phatak road, she and her family members need to use the suit way passing through the property 'B'. That the suit way is being used by her and her predecessor-in-interest continuously for more than 20 years. It is further stated that the suit way is the only way to have access from her house to the Phatak road and vice versa. The plaintiff has also produced on record photographs dated 02/06/2021, 04/06/2021 and 07/06/2021, all supported with affidavits, to show that the compound wall as alleged by her exists and also, to show that she has no other way to access the main tar road, other than the suit way. The reply of plaintiff to the public notice issued by defendants no.1 and 2 before purchasing the property 'B' is produced at exh.4/11. On its perusal, it appears that she had asserted her easementary right of way over the property 'B' in that reply notice. Finally, on perusal of copies of complaints produced at exh.4/8 and 4/9 it appears that, the plaintiff had made complaints to the Tahasildar, Malvan and the Municipal Council, Malvan respectively, about the alleged acts of the defendants.

- 8) Considering the aforesaid facts and circumstances, the material produced on record and the discussion made in regard to it, it *prima facie* appears that the plaintiff has an arguable case. Also, in case during the pendency of this suit, the defendants close the suit way and the access of the plaintiff from her house to the main tar road and vice versa is obstructed, the plaintiff would be subjected to a great inconvenience. Moreover, the loss caused by the apprehended obstruction due to the threatened closure of the suit way, could not be ascertained in monetary terms and therefore, the plaintiff might suffer an irreparable injury. Also, considering the peculiar facts and circumstances before me, I am of the opinion that the object of granting the injunction would be defeated by delay. Hence, for the aforesaid reasons, the following order is passed :-

:- ORDER :-

- a) The defendants or any person on their behalf are hereby restrained from causing any kind of obstruction to or interference with the plaintiff's access to the Phatak road from her house and vice versa, through the suit way and from closing the suit way, either fully or in part, by any means, till their filing of say to the present application (exh.5).
- b) In case, say to the present application (exh.5) is filed by the defendants, in the mean time by taking the matter on board, the ex-parte ad interim injunction granted shall automatically extend till the next date.
- c) Issue notices to the defendants to show cause as to why the ad interim injunction granted ex-parte against them, shall not be confirmed.
- d) The plaintiff to file an affidavit, in terms of clause (b) of the proviso to O. 39 R. 3 of the Civil Procedure

Code, by tomorrow, regarding the compliance of the provisions of clause (a) of the proviso to O. 39 R. 3 of the Civil Procedure Code, in default of which the present order shall stand vacated.

Place :- Malvan
Date :- 09/06/2021

Aditya G. Naik
Jt. Civil Judge Junior Division, Malvan