

Order below Exh. 6 in Regular Civil Suit No. 33/2021

CNR No. MHSN050001462021

(Shrikant Tanaji Patil and Ors. V/s Subhash Yashwant kanase and Ors.)

Present application is filed for grant of temporary injunction under Order XXXIX, Rule 1, 2 of the Code of Civil Procedure.

2. Brief facts of the plaintiff's case are as under,

Plaintiff No. 1 and 2 are husband and wife, while plaintiff No. 3 is the father of plaintiff No. 1. Plaintiffs are the owners of land Gat No. 1128 admeasuring 0-H 57-R, Gat No. 1127 admeasuring 0-H 63-R and Gat No. 1132 admeasuring 0-H 33-R at village Yede Nipani, Tal. Walwa, Dist. Sangli. They have purchased these lands by various Sale Deeds dated 02.06.2007, 27.10.2016 and 15.02.2013. The land Gat No. 1132 is purchased in the name of plaintiff No. 3 and it has been converted to Non Agricultural purposes by order dated 29.06.2018. Defendant No. 1 is the owner of land Gat No. 1131 and defendant No. 2 owns land bearing Gat No. 1133. The defendants have no right in the property owned by the plaintiffs. The land Gat No. 1133 is on the eastern side of Gat No. 1132. There was no any road in between the Bandh of Gat No. 1132 and 1133. There is Gotkhindi-Yede Nipani road on the southern side of Gat No. 1132 and 1133. Gat No. 1131 is on the northern side of Gat No. 1132. There is one east-west road on the western side of Gat No. 1131. That road is being used by the cultivators of Gat No. 1131 to approach the main Gotkhindi road. The defendant No. 1 and 2 falsely stated

that there is Sarbandh road in Gat No. 1127,1128,1129,1130,1132 and 1133. They filed road case No. 18/2018 before defendant No. 10 by making false statements. Defendant No. 10 did not verify the truthfulness and allowed the said application on 29.10.2020. Now, defendant No. 1 and 2 are forcibly trying to create a new road in the said property. There is difference of level of land of Gat No. 1127 and 1128 and hence, there cannot be any road. There was earlier road case No. 222/2007 and one road has been granted on the western side of Gat No. 1131. The disputed road did not appear in the said proceedings. So also another road case No. 31/2007 was filed and it also does not show such any road. Defendant No. 10 has illegally passed the said order. Hence, the plaintiffs have filed the present suit and this application.

3. Defendant No. 1 and 2 have filed their written statement and say at Exh. 46. They strongly objected the claim. They have admitted the description of the properties of the plaintiffs. They stated that they are the owners of eastern $\frac{1}{2}$ share of Gat No. 1131 and western $\frac{1}{2}$ share in Gat No. 1133. Defendant No. 1 had filed R. C. S. No. 383/2013 against defendant No. 3 to 5 for perpetual injunction. That suit was dismissed and an appeal is pending. The plaintiffs had obstructed the road in Gat No. 1127,1128,1129,1130,1132 and 1133. So these defendants filed road case No. 18/2018 before defendant No. 10. The plaintiffs had appeared and had filed their objection. The defendant No. 10 had visited the spot and had drawn a Panchnama. After considering the rival submissions, defendant No. 10 allowed the

said application. The said decision is legal and valid. Though plaintiffs have converted one of their land for Non Agricultural purposes, still they are using the same for cultivation of crop. Due to the obstruction the plaintiffs are not able to use the said road and they have to pay Rs. 10,000/- to one Amar Patil for access to other road. The plaintiffs cannot seek any remedy about the said road and hence the application be rejected.

4. Defendant No. 4, 5, 6, 8, 9 are duly served with the suit summons and notices, but they are absent. Hence, the matter is proceeding Ex-parte against them. Defendant No. 3, 7, 10, 11 appeared, but failed to file their written statement and say. Hence, the suit is proceeding without their written statement.

5. I have heard Ld. Adv. Shri. V. V. Bongale for the plaintiffs and Ld. Adv. Shri. R. V. Hardikar for defendant No.1 and 2 at length. None present for rest of the defendants. Following points arise for my determination and I answer them accordingly along with my reasons,

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiffs prove prima facie case in their favour ?	In the negative.
2.	In whose favour balance of convenience lies ?	In favour of defendants.
3.	Who will suffer irreparable loss in	Defendants will

case of grant or refusal of the relief ? suffer irreparable loss in case of grant of relief.

4. What order ? : Application is rejected.

REASONS

As to Point Nos. 1 to 3 :-

6. Plaintiffs have filed the present suit for grant of perpetual injunction. Plaintiffs stated and submitted that they are the owners of Gat No. 1127,1128 and 1132. The defendant No. 1 and 2 illegally claimed a road over these respective lands and filed proceedings before defendant No. 10. He in turn, has passed order on 29.10.2020 and allowed the said application. That order is illegal, as no such road was ever in existence. Defendant No. 1, 2 have objected the claim and stated that the plaintiffs on the contrary obstructed the said road and the defendants were compelled to file the said application before defendant No. 10.

7. The dispute started from the tenability of the present suit. Herein, Learned Advocate for the plaintiffs relied upon the ratio laid down by Hon'ble Bombay High Court in the case of Uddhav Madhavrao @ Mahadu Solanki V/s Ramappa Dagadappa Jatole reported in 2008 DGLaw (Bom) 3049. I have gone through the said ratio. Hon'ble Bombay High Court has clearly observed that aggrieved party can certainly file a suit before competent Court claiming a declaration and perpetual injunction in respect of the said order of Mamlatdar. So, the suit

cannot be said to be not tenable at least in respect of this aspect.

8. The plaintiffs claim to be owners of Gat No. 1127,1128 and 1132, while defendant No. 1 and 2 claim to be owners of Gat No. 1131 and 1133 at village Yede Nipani. The plaintiffs have also filed the 7/12 extracts of their respective lands at Exh. 8, 9 and 10. They have also filed certain mutation entries at Exh. 11 and 12. If at all the submissions in the plaint and the written statement as well are thoroughly perused, the plaintiffs as well as the defendant No. 1 and 2 agree the ownership of the rival parties. There is no dispute in respect of the ownership on the respective lands and it need not be pondered over.

9. The dispute revolves around the proceedings before defendant No. 10, i. e. Tehsildar, Walwa. Admittedly, present defendant No. 1, 2 had filed road case No. 18/2018 before defendant No. 10 u/s 5 of the Mamlatdar's Courts Act. He had stated that there is a road on the common boundary of Gat No. 1132 and 1133 and of Gat No. 1127,1128,1129,1130,1131. The plaintiff has filed a copy of said order at Exh. 13. Defendant No. 10 went on to consider the rival submissions, spot inspection Panchnama and allowed the said application on 29.10.2020. The plaintiffs were directed to open the common road situated on the boundaries of these Gat No.s 1127,1128,1129,1130,1132 and 1133.

10. The defendants have also filed the whole proceedings alongwith Roznama with list Exh. 49. It is rather prima facie clear that the present plaintiffs were present before defendant No. 10

and had objected the claim by filing detailed say. They have also filed their written arguments and photographs. There was spot inspection on 30.05.2019 before 2 Panchs. Defendant No. 10 carried out the Panchnama and heard the parties. Thereafter he came to conclusion that the plaintiffs have obstructed the already existing road situated on the boundaries of these properties.

11. Now the foremost objection of the plaintiffs is that, there was no any such road in existence on the said boundaries. They relied upon one road case No. 222/2007 before defendant No. 10, which was decided on 23.10.2008. That dispute was also u/s 5 of the Mamlatdar's Courts Act. The disputed road was in between the lands Gat No. 1131,1121,982,976 on one side and Gat No. 1116, 1118, 1119, 1120, 1106, 1107, 1108, 983, 984, 985, 986, 987, 988 on the other side. So far Gat No. 1131 is common in the earlier dispute of year 2007 and the present dispute. However, there is a major difference in the nature of dispute. Though Gat No. 1131 is a common factor in both disputes, the road in the earlier dispute is situated on the western side of Gat No. 1131. The dispute in the case at hand is in respect of road on the eastern side of Gat No. 1131. Furthermore, there are other co-owners in Gat No. 1131 besides these defendant No. 1 and 2. It is also clear that the area of defendant No. 1 and 2 in Gat No. 1131 is on the eastern boundary adjacent to Gat No. 1129 and 1130. So, that dispute and the findings thereon will be limited to those facts.

12. The plaintiffs further relied upon another decision in road case No. 31/2007 dated 13.02.2019. That case was similarly filed u/s 5 of the said Act and was more in relation to the Yede Nipani and Gotkhindi boundary road. Herein, the said boundary road is passing on the boundaries of Gat No. 1133,1124,1125,1126. Here again, Gat No. 1133 is a common factor. However, the road in the said dispute is totally different with a different nature of facts. The present disputed road may not have been shown in the said dispute, but it will have little effect on the present dispute, atleast at this point of time.

13. The plaintiffs further relied upon the order passed by Sub Divisional Officer, Islampur on 29.06.2018 and thereby converted the use of Gat No. 1132 to Non Agricultural purposes. It has been stated that, the map with the said order does not show any road on the boundary of Gat No. 1132 and hence, the claim of defendants is illegal. Indeed, the map with this order does not show a road on the eastern side of Gat No. 1132. But, this order will not itself be conclusive to say that no such common road is there on the boundary of Gat No. 1132 and 1133. This order is passed in view of application filed by one of the plaintiffs and defendant No. 1 and 2 were obviously not called upon to file say. So, this map will also not help the plaintiffs at this point of time.

14. The plaintiffs further relied upon copies of Sale Deeds filed with list Exh. 4. These Sale Deeds are executed in favour of defendant No. 1 and 2. The first Sale Deed dated 10.09.2001 is in respect of Gat No. 1131 executed in favour of defendant No. 1.

The next Sale Deed is dated 29.07.2008 in respect of Gat No. 1133 executed in favour of defendant No. 2. The next Sale Deed is dated 27.10.2020 executed in respect of Gat No. 1133 executed in favour of defendant No. 2. Learned advocate for plaintiffs drew my attention to these Sale Deeds and recitals thereof. He submitted that in all these Sale Deeds the disputed road has never been mentioned even by these defendant No. 1 and 2. I have gone through the same and it is apparent on the face of record that there is no reference to the disputed road in all these Sale Deeds. The defendant No. 1 and 2 were not able to give any valid explanation to the absence of this mention in their own Sale Deeds.

15. The plaintiffs further relied upon certain photographs to show the level of lands for creating an inference of impossibility of road. The photographs are there and they have also been filed by defendant No. 1 and 2 as well. However, the photographs will hardly give any specific idea of the situation of the lands. Still, that cannot itself be a factor to ascertain the existence or non existence of the disputed road.

16. While deciding the dispute, defendant No. 10 went to the said spot and had drawn a Panchnama in presence of the two Panch witnesses. A copy of that Panchnama is filed alongwith order at Exh. 13. It goes to show that Tehsildar visited the said spot on 30.05.2019 alongwith two witnesses namely Subhash Rangrao Patil and Jalindar Ramchandra Mali. He went to Gat No. 1127,1128,1129,1130,1131,1132 and 1133. He observed that

there is five to seven feet road in between Gat No. 1132 and 1133 till Gat No. 1127. Thereafter he did not see any such road in between Gat No. 1127,1128 on one side and Gat No. 1132 on other side. Thereafter he again saw a road in between Gat No. 1129,1130 on one side and Gat No. 1131 on other side. The situations of all these lands can be verified from village map filed at Exh. 4. The situation of all these lands as per this map is accepted and admitted by the plaintiffs and defendant No. 1,2.

17. So, on perusal of this Panchnama and the map, it prima facie appears that Gat No. 1132 and 1133 are located adjacent of main road,i.e. Gotkhindi-Yede Nipani Road. Gat No. 1132 is on the western side of Gat No. 1133. Gat No. 1131 is on the northern side of Gat No. 1132. Gat No. 1127 is on the northern side of Gat No. 1133. Gat No. 1128 thereafter Gat No. 1129 and thereafter Gat No. 1130 are situated on the northern side of each other after Gat No. 1127. So, when defendant No. 10 observes a common road on the boundary of Gat No. 1129, 1130 on one side and Gat No. 1131 on other side, it should lead somewhere to the main road,i.e., Gotkhindi-Yede Nipani Road. Further, defendant No. 10 observed a road in between Gat No. 1132 and 1133. So, there is a missing link in between these two roads and it is in between Gat No. 1127,1128 on one side and Gat No. 1132 on the other side.

18. Incidentally, Gat No. 1127 and 1128 are owned by plaintiff No. 1 and 2. So also the portion of Gat No. 1132 adjacent to Gat No. 1133 is owned by plaintiff No. 3. So, basically, the

boundaries of Gat No. 1127,1128 and 1132 are common and the lands adjacent to them are owned by the plaintiffs. Defendant No. 10 found obstructions at these common boundaries of Gat No. 1127,1128 and 1132. He drew an inference of blockage, obstruction of road in between and proceeded to pass the said order. Now, there is no any cogent explanation to these circumstances coming on record by way of this Panchnama.

19. Learned advocate for the plaintiffs submitted that defendant No. 10 did not give advance notice and did not follow a proper procedure while visiting these lands. He also submitted that, the whole procedure adopted by defendant No. 10 is flawed and cannot be sustained. He also relied upon the ratio laid down by Hon'ble Bombay High Court in the case of Sudhir Yashwant Dhangada V/s Ankush Kashiram Bole and Ors. reported in 2019 CJ(Bom) 7. He argued that the plaintiffs should have been given an opportunity to cross examine the defendant No. 1 and 2 and their witnesses, if any.

20. I have gone through the said ratio and Hon'ble Bombay High Court observed that the party has the right to cross examine the rival party and his witnesses and there is no need even to file any application seeking such right to cross examine. This ratio lays down the basic right to cross examine of a party. Here in the case at hand, there is nothing on record to show that the defendant No. 1 or 2 examined themselves or any witnesses on their behalf. Still, the right to cross examine by the plaintiffs is valuable and can be a ground to question the procedure adopted

by defendant No. 10. However, to raise a question about this procedure and the order of defendant No. 10, there should be proper averments and a basic relief.

21. No doubt, the plaintiffs have questioned the manner in which the order was passed by defendant No. 10. They have also termed the order to be illegal for their reasons. There are pleadings to that effect. But, the plaintiffs thereafter proceed to seek only a relief of perpetual injunction. The suit does not seek any more relief. Herein, Section 41(h) of the Specific Relief Act will come into play. It requires the party to seek equally efficacious remedy alongwith the relief of injunction. Even if for the sake of arguments it is considered that there is no such road in existence as per the order of defendant No. 10, merely seeking a relief of perpetual injunction will not take the dispute anywhere. If the suit is decreed in toto, still the order of defendant No. 10 will remain in existence. As discussed earlier, though there are certain pleadings about the validity of the order, no further relief of declaration has been claimed by the plaintiffs for the reasons best known to them. This absence of relief hampers even their request for interim protection.

22. The plaintiffs have been reiterating that the defendant No. 1 and 2 have alternate road and they are making up a new road from the property of plaintiffs. So far the scope of proceedings u/s 5 of the said Act is limited. The Mamlatdar has to see whether there was any road in existence on the given spot and not the existence of alternate roads. The Panchnama makes a big

dent in the case of plaintiffs at this prima facie stage. Even defendant No. 1 and 2 have filed affidavit of one Amar Patil with list Exh. 62. It prima facie appears that defendant No. 1 and 2 are using the said road by paying some compensation to this person. The plaintiffs as well have filed certain supporting affidavits of Janardan Patil, Yashwant Patil. They are co-owners in Gat No. 1132. However, these affidavits do not explain as to why a road is seen in the interior section of Gat No. 1129,1130 and 1131.

23. Having considered all these aspects, I do find that there are certain circumstances wherein the plaintiffs may have some advantage namely absence of road in the Sale Deeds and evidence taken by defendant No. 10. But as discussed earlier, these aspects are clouded by the absence of relief of declaration in respect of order passed by defendant No. 10. So, the plaintiffs fail to prove their prima facie case. The balance of convenience lies in favour of defendant No. 1 and 2. If injunction as prayed is granted, the defendants will not be able to use the road. However, if injunction is refused, the plaintiffs will not suffer irreparable loss as the plaintiffs can still seek further remedy and can go for the ultimate merit. Hence I answer the points accordingly.

As to Point No. 4 :-

24. In view of the above discussion and the findings, I pass the following order,

ORDER

Application is rejected.

**Islampur
Date:08.10.2021**

**Sd/xxx
(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur**