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**Order Below Exh 05 in Regular Civil Suit No. 232/2013**

( Balasaheb Raigonda Patil and other V/s Chief Officer, Jath Nagar  
Parishad, Jath and others )

1. Present application filed by plaintiffs under Order 39 Rule 1, 2 and section 151 of the Code of Civil Procedure for temporary injunction against defendants No. 01 to 11 restraining them from making encroachment and laying pipe-line by excavating ditches in Survey No. 709/1A admeasuring 1 Hector 28 R ( *P.K. 0.18 R* ) assessment Rs. 1. 46 Ps. bounded as :-

To East	: Shalan Prakah Patil
To West	: Land of Krishi Uttppan Bajar Samittee, Jath.
To South	: Land of Vitthal Kenchappa Patil
To North	: Defendant's land out of Survey No. 710

( Here-in-after called as “ Suit Property “ ).

2. It is the case of plaintiffs that, suit property is their ancestral property and they cultivating irrigated crops of Banana, Wheat and Vegetables therein. Plaintiffs pleaded that, suit land is adjacent to Jath Gaothan and defendants have no any concerned with suit property. It is contention of plaintiffs that, defendants No. 02 to 11 are belongs to his brotherhood and their strips of land situated in Gat No. 710. Suit land is of east-west direction and to north side thereof, there is land Gat No.

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710. Towards north side adjacent to suit land, there are boundaries of Survey No. 710/12, Survey No. 710/16, Survey No. 710/17 and Survey No. 710/2010 and holders thereof are defendants No. 02 to 11.

3. It is contention of plaintiff that, defendants No. 02 to 11 are trying to excavate eastern side stones of boundary mark out of plaintiffs Survey No. 709. There is dispute between plaintiff and defendants No. 02 to 11 on the point of boundaries. Panch committee suggested plaintiffs to survey the lands Accordingly, plaintiffs have conducted Survey, but having faulty Survey, plaintiff had preferred Complaint towards Superior Survey Authority. After inquiry it revealed that, said survey was faulty one. Accordingly, Superior Survey Officers ordered to re-Survey but recently there is Maize crop in suit property, hence Survey was not processed. Having knowledge of situation, defendants No. 02 to 11 in collusion with Corporator of that area trying to encroach in suit property by excavating ditches. Plaintiffs have filed Complaint towards Tehsildar, Jath as well as to defendant No. 01. Defendants No. 02 to 11 with the help of defendant No. 01, trying to encroach over suit property and if they succeeded to do so, then plaintiffs will suffer irreparable loss. Hence present application.

4. Defendant No. 01 appeared and filed Say vide Exh 16. Defendant No. 01 has denied plaint contents and submitted that, at northern side of Survey No. 709/1A, there is east-west direction road and

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defendants No. 02 to 11 have houses at north side of this road and they enjoying the said road. The area of road and defendants enjoyment area is about 10 to 12 R. Hence there is no exclusive possession of plaintiffs over suit property. There is no irrigated crops in suit property. Likewise due to damage of old pipe-line, defendant No. 01 laying in new pipe-line on the place of previous old pipe-line, hence no loss causes to plaintiffs.

5. Defendant No. 01 further submitted that, prior to institution of Suit, no previous notice issued to defendant No. 01- Nagar Parishad. Since 1956, two to four times plaintiff has measured suit property and in each Survey, it revealed that, to northern side of suit property at 10 to 12 R area, there is enjoyment of defendants since 1956. Likewise at east side of suit property, there is south-north direction road and same road passes through suit property towards western side by east-west direction. Previously there was pipe-line of Grampanchayat, Jath, passes towards peoples of Gadde Patil ( i.e. defendants No. 02 to 11) locality, but due to damage of said pipe-line, the peoples of 15 to 20 houses feels inconvenience of Water facility and hence, Maharashtra Jeevan Pradhikaran ( Urban) and Rural Scheme, Sangli, has sanctioned work order on 17.06.2013 in Municipal Area, Jath and said pipe-line sanctioned till defendants locality. Initially said pipe-line come towards Shegaon-Jath road and thereafter approaching to Hatti Farm said pipe-line comes to east-west road and then by moving towards east side of plaintiffs land touches to plaintiffs north boundary by south-north road

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of plaintiffs eastern side land. Work of pipe-line completed and same laid on the space of previous old pipe-line location. Plaintiffs without any cause raised dispute. Defendant No. 01 further submitted that, no any defendants tried to encroach over suit property. Likewise defendant No. 01 having local authority, they have no need to avail permission of Tehsildar. It is contention of defendant No. 01 that, the location of said pipe-line is under three feet through east-west road situated towards northern side between plaintiffs and defendants land. Likewise location of said pipe-line is on the place of previous old pipe-line, hence there is no any loss causes to plaintiffs. Plaintiffs have no any Crop where said pipe-line is situated. Defendant No. 01 is laying said pipe-line with due sanction of Government for eradication of Water scarcity of Gadde Patil farm facility.

6. It is further contention of defendant No. 01 that, in Survey Map, it revealed that, plaintiffs enjoyment is towards southern side apart from ' Rastapad ' and same shown by dotted lines. This fact shows that, plaintiffs are not in exclusive possession of whole area of suit property. Likewise by replacing old pipe-line situated in ' Rastapad ', defendant No. 01 is erecting new pipe-line only to eradicate the scarcity of water of plaintiffs as well as defendants. Hence plaintiffs will not cause any loss due to erection of pipe-line. Plaintiffs have failed to produce any evidence about encroachment and their irreparable loss. Lastly, defendant No. 01 has submitted that, the work of pipe-line should be

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completed prior to March end, unless the sanctioned amount will be lapsed and thereafter work of pipe-line never be completed, accordingly defendants No. 01 to 12 will suffers from irreparable loss, which cannot be compensated by any means. Hence application be rejected.

7. Defendants No. 02 to 10 have filed their Say vide Exh 11. They resisted the application contents and submitted that, in partition suit property come to the share of plaintiffs No. 01 and 02 and prior to possession, Survey and division made vide 1A, 1B, 2B to 8 and the least eastern side land i.e. suit property come to share of plaintiffs. Adjacent to Old Survey No. 763 (new Gat No. 709) at northern side, there is land Survey No. 764 and same divided by survey/division into 1 to 18 strips, and since 1960, plaintiffs and defendants are in possession over their strips.

8. It is further contention of defendants that, to approach land of plaintiffs and defendants, there is east-west tar road passes through western side land of Hatti. This road move through east to north boundary of plaintiffs and likewise same passes through north boundary, western side and again passes towards north side of Survey No. 709. As such, since 1960 defendants enjoying their right of way through Survey No. 709/1A till today. The east-west road through plaintiffs northern boundary get to defendants by way of Right of Prescription.

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9. It is further contention of defendants that towards northern side of plaintiffs Survey No. 709/1A, there is ' Rastapad ' admeasuring 11 to 12 R and towards southern side of this ' Rastapad ', plaintiffs constructed stone dyke for mark of boundary and northern side ' Rastapad ' enjoying by defendants since more than 50 years. Plaintiffs have no concerned with this ' Rastapad ' .

10. It is further contention of defendants that Jath Grampanchayat has provided water tap connection to Gadde Patil Farm area and said connection moves through north boundary of Hatti's land, through plaintiffs land by east to north boundary road till west side by north direction. Due to scarcity of water, Water Supply Project sanctioned through Nagar Parishad, hence defendant No. 01, at north side through road of Hatti's land and through east boundary till north boundary of plaintiffs lands, 3 feet depth ditches excavated and pipe-line laid therein till half area of north boundary of east-west road defendant No. 01 has laid pipe-line but with ill-intention to not provide water supply to defendants No. 02 to 11, plaintiffs have filed present false suit.

11. It is further contention of defendants that, plaintiffs re-surveyed their land vide M.R. No. 1165. As per Map Exh 13/01, to north side, from east point ' Rastapad ' shown and ahead shown as ' Talpad ' by dotted lines. Plaintiffs enjoyment is till portion of dotted lines, as boundary of plaintiffs land is in existence till doted lines and beyond

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dotted lines, there is no enjoyment of plaintiffs. This fact reveals from Map Exh 13/01.

12. It is further contention of defendants that, eastern side land admeasuring 10-12 R out of Survey No. 709/1A is arid land and plaintiffs not cultivate the same nor their crop is existence over the same. Plaintiffs have not issued notice to defendant No. 01 prior to institution of suit. Defendant No. 01 in good faith laid pipe-line to eradicate water scarcity of locality of Survey No. 710. Hence plaintiffs have no right to bring such type of suit.

13. It is further contention of defendants that, on 06.12.2013 plaintiffs have given statement before Surveyor that, they admitted boundary marks of most urgent Survey dated 16.11.2013. Plaintiffs have filed present suit prior to most urgent survey without any knowledge of suit property. Hence plaintiffs application be rejected.

14. Heard both sides.

15. On the basis of application and Say by other sides, following points do arise for determination and I have recorded findings thereon with reasons stated against each of them as under :-

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**POINTS**

**FINDINGS**

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| (1) <i>Whether plaintiffs have prima facie proved their case coupled with balance of convenience ?</i>           | <i>In to negative</i>      |
| (2) <i>Whether plaintiffs will suffer irreparable loss, if injunctive relief is not sought in their favour ?</i> | <i>In to negative</i>      |
| (3) <i>Whether plaintiffs are entitled for injunction as claimed for ?</i>                                       | <i>In to negative</i>      |
| (4) <i>What order ?</i>  | <i>As per final order.</i> |

**REASONS**

**AS TO POINTS NO. 1 TO 3 :-**

Subject matter and evidence involved in Point Nos. 1 to 3 are interlinked and interconnected with each other, hence, in order to avoid repetition of evidence these points are discussed herewith together.

16. After perusal of evidence on record it appears that, in support of their contention plaintiffs have filed on record 7/12 extract of Survey No. 709/1A at Exh 08, 7/12 extract of Survey No. 710/9 at Exh 09, 7/12 extract of Survey No. 710/12 at Exh 10, 7/12 extract of Survey No. 710/16 at Exh 11, 7/12 extract of Survey No. 710/17 at Exh 12, 7/12 extract of Survey No. 710/10 at Exh 13, application dated

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26.08.2013 made by plaintiff to Tehsildar, Jath at Exh 03/07, application dated 01.10.2013 made by plaintiff to T.I.L.R. Jath at Exh 03/08, order dated 24.09.2013 of T.I.L.R. Jath at Exh 03/09, application dated 10.05.2013 made by plaintiff to Jath Nagar Palika at Exh 03/10, application dated 17.10.2013 made by plaintiff to Nagar Parishad, Jath at Exh 03/11, Map dated 13.02.2014 at Exh 23/01, Map dated 21.06.1987 at Exh 23/02, Map dated 26,27.02.1957 at Exh 23/03, 7/12 extract of Survey No. 710/14 at Exh 23/04 and 7/12 extract of Survey No. 710/11 at Exh 23/05.

17. In support of contention defendant No. 01 has relied on documentary evidence i.e. copy of issue of work order dated 17.06.2013 issued by Maharashtra Jeevan Pradhikaran Urban and Rural Schemes Division, Sangli at Exh 20/01, copy of application dated 28.10.2013 addressed to Chief Officer, Jath Nagar Parishad, Jath by Maharashtra Jeevan Pradhikaran Urban and Rural Schemes Division, Sangli at Exh 20/02, application dated 18.10.2013 made by the peoples of Gadde Patil Mala addressed to defendant No. 01 at Exh 20/03.

18. In support of contention defendants No. 02 to 10 have relied on documentary evidence i.e. Map dated 21.09.2013 at Exh 13/01, Map dated 20.02.2014 at Exh 13/02, statement of plaintiff, defendants No. 6,7 at Exh 13/03, statements of plaintiffs No. 01 and 02 at Exh 13/04, extract of Grampanchayat Property No. 381 at Exh 25, water

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payment receipt dated 11.03.2014 at Exh 13/06, extract of Grampanchayat Property No. 382 at Exh 26, water payment receipt dated 10.03.2014 at Exh 13/08, extract of Grampanchayat Property No. 383 at Exh 27, water payment receipt dated 11.03.2014 at Exh 13/10, extract of Grampanchayat Property No. 384 at Exh 28, water payment receipt dated 10.03.2014 at Exh 13/12, extract of Grampanchayat Property No. 385 at Exh 29 and water charges receipt dated 13.03.2014 at Exh 31/01.

19. Plaintiffs have mentioned area of suit property admeasuring 1 Hector 28 R ( 0.18 R Pk ). Plaintiffs contention is that towards northern boundary of their land defendants are trying to make encroachment, due to which their crops will be damaged. It is further contention of plaintiffs that there is no ' Rastapad ' at northern side nor there is right of way of defendants. It is further contention of plaintiffs that, there was no previous pipe-line nor right of way to defendants at northern side of suit property and defendants have not produced any evidence to that effect.

20. In support of their contention, plaintiffs relied on Map at Exh 23/01. After perusal of Map at Exh 23/01, it appears that Saffron coloured portion shown as ' ON -F ' letters admeasuring 0.07 R is belongs to plaintiffs Survey No. 709/1A, but as per Survey said saffron coloured portion ' ON – F ' is in possession of holders of Survey No. 710. It means plaintiffs are not in exclusive possession over area 1

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Hector 28 R (0.18 pk) of Survey No. 709/1A. Without availing specific remedy of recovery of possession against holders of Survey No. 710, plaintiffs have filed present suit for simplicitor injunction.

21. It is contention of defendants that, towards northern side of plaintiffs Survey No. 709/1A, there is east-west direction way and defendants No. 02 to 11 enjoying the said way, as their houses are situated at northern side of said way. The area of this way and area which in possession of these defendants admeasuring approximately 10 to 12 R. Hence there is no enjoyment of plaintiffs over said area nor their crops situated therein. Likewise defendant No. 01 is laying pipe-line on said portion. On that portion, previous old pipe-line is in existence, but due to damage of old pipe-line defendant No. 01 is erecting new pipe-line on the same portion, hence no any loss causes to plaintiffs. But plaintiffs denied this contention of defendant No. 01 as he submitted that, there is no right of way of defendants at northern side nor previous old pipe-line is in existence therein. As per plaintiffs, defendants have no any proof in support of their contention.

22. In support of their contention defendants No. 02 to 11 have filed on record Map of most urgent Survey vide Exh 13/02, which Survey was conducted as per application of plaintiffs. After perusal of Map at Exh 13/02, it appears that, towards northern side of plaintiffs Survey No. 709/1A, there is mentioned as ' Rastapad ' and ' Talpad ' and

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this fact admitted by plaintiffs vide placing reliance on said most urgent Survey. This ' Rastapad ' and ' Talpad ' portion is in possession of defendants No. 02 to 11. This fact also admitted by plaintiffs while placing on record Map vide Exh 23/01. As per said Map, the saffron coloured portion shown as letters ' ON- F ', is in possession of defendants No. 02 to 11. This most urgent Survey and Map admitted by plaintiffs vide statement at Exh 13/04 given before T.I.L.R. Authority. Plaintiffs have filed on record letter dated 26.08.2013 issued by them to Tehsildar vide Exh 03/07, in which he specifically admitted to erect south-north pipe-line for Survey No. 710 through his Survey No. 709. This letter at Exh 03/07 is prior to Survey.

23. It is contention of plaintiffs that, previous old pipe-line is not in existence for supply of water to defendants No. 02 to 11. Defendants have filed on record assessment list extracts and tax receipts at Exh 26, Exh 28 and at Exh 29 of defendants No. 02, 03, 04, 05 and 06. After perusal of these extracts and receipts, prima-facie it appears that, for the year 2013-14, defendants have paid water tax to defendant No. 01. These documentary evidence prima-facie shows that, previous old pipe-line is in existence. No rebuttal prima-facie evidence produced by plaintiffs to wash out contention of defendants as there is old pipe-line is in existence.

24. It is contention on behalf of plaintiffs that, having no any

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rights, defendant No. 01 is trying to lay pipe-line towards northern boundary of their land. By admitting Map Exh 23/01, plaintiffs have not disputed that, towards northern side portion admeasuring 0.07 R of plaintiffs Survey No. 709/1A is in possession of defendants No. 02 to 11. Plaintiffs also admitted that, towards northern side boundary mark of his property bears ' Rastapad ' and same enjoying by defendants No. 02 to 11. In such backdrops, plaintiffs contention that, defendant No. 01- Nagar Parishad, Jath, have no right to lay pipe-line from said portion. It is admitted fact that, defendant No. 01- Nagar Parishad, Jath is not exclusive owner of said portion. Defendant No. 01 is self local body and they doing the noble duty to supply water for public benefit. As per Section 218 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, Nagar Palika have powers to lay pipe-lines within or without the Municipal area. Section 218 of the said Act reads as under :-

**Section 218 :- Power of carrying water mains-** *For the purpose of obtaining a supply or an additional supply of water or of distributing the same, the Council shall have the same powers and be subject to the same restrictions for carrying, renewing, repairing, altering and inspecting water mains, pipes and ducts within or without the municipal area as it has and is subject to under the provisions hereinbefore contained for carrying , renewing, repairing, altering and inspecting drains within the municipal area.*

In view of abovesaid specific powers of Nagar Parishad to lay pipe-line, plaintiffs contention as defendant No. 01 have no right to

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lay pipe-line, have no any base.

25. Having 0.07 R area of plaintiffs Survey No. 709/1A is in possession of defendants No. 02 to 11, plaintiffs suppressed this fact and without claiming recovery of said area, plaintiffs claim for injunction is prima-facie not tenable in the eyes of law. Plaintiffs have admitted most urgent Survey and Maps at Exh 13/01 and Exh 23/02. As per said Map, in between enjoyment of Survey No. 709/1A and Survey No. 710, there is ' Rastapad ' at northern side and this ' Rastapad ' is in enjoyment of defendants No. 02 to 11. This fact not disputed by plaintiffs. From this northern side ' Rastapad ' proposed pipe-lines is to be laying by defendant No. 01. Admission of plaintiffs regarding enjoyment of defendants No. 02 to 11 at ' Rastapad ' of northern side of their property reveals that, plaintiffs have no any obstruction at the hands of defendants. As per Section 218 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, defendant No. 01 have powers to lay pipe-line within and outside the limits of Municipal area. Hence defendant No. 01 have every right to lay pipe-line as per proposed site. Plaintiffs have failed to make out their case coupled with balance of convenience. No irreparable loss causes to them, if injunctive relief not sought in their favour. Hence points No. 01 to 03 are answered in affirmative and as to point No. 04, following order follows :-

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**ORDER**

- (1) The application vide Exh 05 is rejected.
- (2) The earlier ad-interim temporary injunction order passed below Exh 18 on 24.03.2014, is hereby set aside.
- (3) Costs of the application shall be in the main cause.

Jath  
Date : 02.04.2014

Sd/-  
(D.S.Thorat)  
Civil Judge Junior Division,  
**Jath.**