

**Regular Civil Suit No. 134/2015.**  
**O R D E R** (Below Exh.5)

(1). This application is filed by the plaintiffs under O. 39 R.1 of the Code of Civil Procedure, for issuing temporary injunction against the defendant restraining him from implementing order of Tahasildar, Tasgaon passed in proceeding bearing no. Land/S.R./27/2014 and from making 10 ft way from suit lands.

(2). Land survey nos. 560/1M/1 and 560/1B/1 situated in Tasgaon, Taluka Tasgaon are the subject matter of present suit. (Hereinafter referred as 'suit lands').

(3). Brief facts of the plaintiff's case are as under :

According to plaintiffs, they are owner and possessor of the suit lands. Suit lands are situated in east-west directions. Tasgaon to Landgol tar road situated towards east side of the suit land survey no. 560/1M/1. Land survey no. 546 is situated towards south side of plaintiffs' land. There is survey boundary between suit lands and land survey no. 546 and there is 3 ft foot-way on said survey boundary which runs towards west from east side tar road since last 100 years. The plaintiffs have erected steel rack cum shed in south side of their lands before 20 years ago for making raisins from grapes. The 3 ft foot-way situated towards south side of said rack cum shed, however the defendant has filed application bearing no. 27/2014 under section 5(2) of the Mamalatdar's Court Act before the Mamalatdar Court, Tasgaon to get 10 ft width way. In said proceeding the defendant has claimed road where sub-canal planned to be erected and it is at 20 ft

distance from plaintiffs' land. However, without considering this aspect and without any evidence on 28-05-2015 the Mamlatdar's Court ordered to give way of 10 ft. Said order is totally illegal and not binding upon the plaintiffs. Hence, the suit for setting aside said order and to declare that said order is not binding upon plaintiffs with prayer of permanent injunction to restrain defendant from making way of 10 ft width from suit lands. Along with this application for interim injunction.

**(4).** The defendant has filed his written statement and say at Exh.18 and resisted the suit and present application. He denied the suit claim and allegation of plaintiffs in to-to. According to him, disputed way is not of 3 ft in width, but it was and is of 10 ft in width and 300 ft in length and it is from sub-canal which is planned on survey boundary. The defendant using the said way to approach his land block no. 560/1K/1B. However, plaintiffs obstructed said way by erecting shed and by fixing bamboos in said way. Therefore, defendant moved an application before Mamlatdar's Court, Tasgaon under the provisions of Mamlatdar's Court Act for removing the said obstructions. Said application is decided on merits after taking spot inspection. Said order is legal one and it is not challenged by the plaintiffs before appropriate forum and filed this false suit to harass defendant. The plaintiffs have no prima-facie case and if injunction is granted, it will cause hardship to defendant. Hence, he prayed to dismiss the suit and reject the present application with costs.

(5). Heard the learned advocates for both sides at length. Perused pleadings, documents, affidavits of the witnesses and Court Commissioner's report.

(6). Considering pleadings of parties, following points arise for determination and I answer thereon accordingly for the reasons as follows :

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiffs have prima facie case ?	No.
2. Whether the balance of convenience lies in favour of the plaintiffs?	No.
3. Whether the plaintiffs will suffer an irreparable loss, if T.I. application is rejected ?	No.
4. What order?	As per final order.

### REASONS

#### AS TO POINT NOS. 1 TO 3 :

(7). It is not disputed by the defendant that the plaintiffs are owner of the suit lands. The defendant is owner of land block no. 560/1K/1B which is situated nearby to the suit lands. A crucial question is whether there is east-west way, as pleaded by the defendant or he is obstructing possession over the suit lands, as alleged by plaintiffs.

**(8).** The Mamlatdar Court is a primary Court for agriculturists. In view of the powers conferred under sub-sections (1) and (2) of section 5 of the Mamlatdar's Court Act, it can decide disputes connected with lands, canal or water course, use of roads, or customary ways to land etc.

**(9).** On perusal of the photographs produced by the plaintiffs at Sr. No. 3 with list Exh. 21, it seems that bamboos are tied in vertical manner with steel rack and said bamboos are fixed towards disputed way in cross manner. On perusal of judgment and order of the learned Mamlatdar's Court, Tasgaon dated 28/05/2015, it seems that defendant had filed suit bearing No. Land/S.R./27/2014 against plaintiffs. Said suit came to be decided and the learned Mamlatdar's Court, Tasgaon passed final order of injunction against the plaintiffs restraining them as not to disturb the way of defendant and directed to plaintiffs to remove the obstruction created in the way. Before passing such injunction order on 19/09/2014, the learned Mamlatdar's Court i.e. Tahasildar, Tasgaon has personally visited and inspected the suit site and prepared panchanama. In said panchanama, it is mentioned that towards western side of tar road (old Satara road) there are signs and marks of existing of 10 ft x 300 ft way which runs in east-west direction. In this context, it can safely be said that there is way/road towards south side of suit lands, as pleaded by the defendant.

**(10).** Therefore, the defendant exercised his right over the way, by following due procedure of law in view of the provision under the Mamlatdar's Court Act. The plaintiffs have challenged the

Mamlatdar's Court's decision and order before this Civil Court instead of challenging it before appropriate forum under sub-section (2) of Section 23 of the Mamlatdar's Court Act. By filing suit plaintiffs are seeking relief for setting aside the Mamlatdar's Court order and to declare that said order is not binding upon them. Further, they have sought interim injunction restraining defendant from implementing Mamlatdar's Court decision and order. Being a Civil Court, whether this Court can look into the question of legality of finding of Mamlatdar's Court, Tasgaon as in view of provision under sub-section (2) of section 23 of the Mamlatdar's Court Act, revisional powers vested with the District Collector and he can look into the question of legality and propriety of findings of Mamlatdar's Court. In this context, there is serious question whether prayer of plaintiffs is sustainable in the eye of law.

**(11).** In proceeding before the Mamlatdar's Court plaintiffs Dnyandeo and Subhash Dhabugade appeared as opponents and they have filed their say wherein they stated about the existence of 10 ft way. In this context, the learned advocate for defendant submitted that the plaintiffs themselves have admitted the existence of 10 ft road before Mamlatdar's Court. The learned advocate for plaintiffs submitted that there is one another way having 10 ft. width. Mamlatdar's Court personally visited and inspected the suit site and found that there is 10 ft x 300 ft road and plaintiffs have made obstruction over it. After hearing to plaintiffs, the suit before the Mamlatdar's Court is decided on merits and he ordered to remove the said obstructions and restrained the plaintiffs from causing obstruction

to defendant's way. The defendant has exercised his right over the way by following due procedure of law. The defendant has possessed executable order of competent Court having jurisdiction to issue such injunction order. Hence, plaintiffs have no prima facie case. Naturally, the balance of convenience do not lie in favour of plaintiffs. Consequently, no any irreparable loss will be caused to plaintiffs, if temporary application is rejected. I, therefore, answer Point Nos. 1 to 3 in the negative and pass following order.

**ORDER**

1. The application is rejected.
2. Costs in cause.

**TASGAON.**  
Date : 16.12.2016.

Sd/-xxx  
(A. A. Chendke)  
CIVIL JUDGE, JUNIOR DIVISION.  
**TASGAON.**