

Order below Exh.5 in R.C.S. No. 61/2022

CNR-MHSN-12-000453-2022

(Krushnabai Dinkar Suryawanshi Etc V/s Dattaji Hindurao Suryawanshi Etc)

The plaintiff has filed the present application for seeking the relief of temporary injunction.

2. The plaintiff has instituted the present suit praying for setting aside the order of Tahasildar passed in Investigation Way/S.R./1/2021 (फेरचौकशी रस्ता/एस.आर./१/२०२१) passed on 28/04/2022, whereby, the Tahasildar has declared the way at Ankalkhop, Tal. Palus, Dist. Sangli from Gat No. 1428 towards east from Gat No. 1427 and 1429 channel (सरबांध) 10 ft width way.

Description of suit property :-

3. Dist. Sangli, Tal. Palus village Ankalkhop, Gat No. 1427 ad-measuring 2 H 44 R bounded as follows;

East – way and Krishna river

West – Gat No. 1442 and 1428

South – Gat No. 1432, 1433

North – Gat No. 1443

'B' Property :-

4. Gat No. 1429 ad-measuring 2 H 54 R bounded as follows:

East – Gat No. 1427

West – Gat No. 1442

South – Gat No. 1430

North – Gat No. 1428, 1430

Brief story of plaintiff's case :-

5. Plaintiff's submits that in column No. 1A the land gat No. 1427 is the property of plaintiff No.1 to 9 and property No. 'B' is the property of plaintiff No. 10 and 11. Both properties are ancestral and in their cultivation respectively. Defendants are the owner and possessor of land Gat No. 1428 and they have no way from eastern side of land Gat No. 1427 or 1429. Land Gat No. 1429 and 1430 its eastern side there is part of land Gat No. 1427. That part is open house of ad-measuring 14 R. In which there is house and cattle-shed one can not go from which western side to eastern side. Therefore, there is no way from these land Gat numbers and in land Gat No. 1427 and land Gat No. 1428 of southern side east-west there is land Gat No. 1429. The land Gat No. 1427 and 1429 are adjacent to each other there is no channel(सरबांध) in between them. In the same way in land Gat No. 1428 and 1429 from the eastern side there is land Gat No. 1427 and there is no channel(सरबांध) between them. Hence, there is no way in land Gat No. 1427.

6. In pursuance of summons, defendants appeared through their Ld. Advocate S. D. Mane vide Exh. 24. They submit that the suit is not maintainable. The plaintiffs have not given proper and correct four boundaries of suit property. Therefore, it is hit by Order 7 Rule 3 of C. P. C. The defendants admit that plaintiff No. 1 to 9 are the owner and possessor of land Gat No. 1427 and plaintiff No. 10 and 11 are the owner and possessor of land Gat No. 1429. In the same way they admitted that from the eastern side of land Gat No. 1427 southern and northern there is Audumbar to Amnapur Government way. But they denied that they have no way from eastern side of land Gat No. 1427. The defendants contended that they are the owner and possessor of the land Gat No. 1428. There is way in between land Gat No. 1427 and lad Gat No. 1429 which is adjacent to this way from

land Gat No. 1427 from southern-northern side there is Audumbar to Amnapur Road having 10 ft width. Since long the defendants are cultivating in land Gat No. 1428. The defendants have no alternative way for going to Audumbar to Amnapur way. The defendants submit that the Tahasildar has rightfully come to the conclusion that defendants have no alternative way. The Tahasildar after detail investigation and after perusing panchnamas passed the correct order. In the proceeding before Tahasildar the defendants agreed to leave the open space about 20 ft. X 10 ft. for the area of way. The defendants have sown the sugar-cane but due to obstruction carrying out by plaintiffs they are unable to go. Lastly the defendants prayed the rejection of the application of plaintiff.

Proceedings filed by plaintiffs and defendants :-

7. Initially defendants had filed Investigation of way bearing case No. S.R./6/2018. The Tahasildar directed to plaintiffs declared that there is way in land Gat No. 1427. The plaintiff being aggrieved by the order had appealed to sub Divisional Officer Kadegaon bearing R.T.S. Appeal No. 45/019. The Sub Divisional Officer had set aside the order of Tahasildar and remanded back the case to investigate and for passing the order. However, being aggrieved by the order of Sub Divisional Officer, the defendants preferred Second appeal before Deputy Collector. But the Deputy Collector also confirmed the order of Sub Divisional Officer. Consequently, the investigation of way Case No. 1/2021 tried before Tahasildar. Being aggrieved by the order of the Tahasildar present application is filed. It is to be noted that the plaintiffs after passing of order by Tahasildar on 30/01/2019 plaintiffs had preferred appeal before Sub Divisional Officer on 07/02/2019. The plaintiffs also had filed the R. C. S. on 15/04/2019. Plaintiffs availed two remedies at the same time, therefore, the R.C.S. bearing No. 100/2019 rejected by the Civil Judge vide Exh. 2 on 05/07/2019.

Observation of Courts :-

8. The Sub-Divisional Officer on appeal preferred by plaintiffs has observed that the plaintiffs will become landless. The Tahasildar may pass order allowing the way from one channel. The Tahasildar can not allow or direct the way to the given from the land of plaintiffs. The Tahasildar should consider that defendants whether have alternative way for coming and going purpose and accordingly remanded the matter to decide afresh after detail investigation by the Tahasildar.

9. On the appeal before Deputy District Collector preferred by defendants, the Deputy Collector considered that plaintiffs are having very low space and they will suffer a lot. If the order passed by Tahasildar directing to allow the defendants the way for coming and going purpose, there will be partition of Gat No. 1427. As per section 143 of Maharashtra Revenue Code the Tahasildar may pass order directing way from channel(सरबांध). But he can not allow the way from one land having Gat. Therefore, order of Tahasildar allowing way in land Gat No. 1427 from eastern side 10 ft width way set aside by the Deputy Collector, Sangli.

10. Perused the panchnama dated 27/11/2018. The Tahasildar while carrying out panchnama found that in between land Gat No. 1427 and 1429 there is small way(पाऊलवाट). While in panchnama dated 25/11/2021 it has found by the Tahasildar in land Gat No. 1427 and land Gat No. 1429 there is a small way(पाऊलवाट) from east-west. In land Gat No. 1427 and 1428 the sugar-cane is sown. In land Gat No. 1429 the hatti grass (हत्तीघास) is sown. In eastern side of land Gat No. 1427 there are open house and cattle-shed. In Gat No. 1427 and 1429 there is water tee. In land Gat No.

1427 and 1429 there is small way(पाऊलवाट).

11. After taking into considering the both Panchnamas, Tahasildar has pass the order dated 28/04/2022. The Tahasildar has considered that there is small way (पाऊलवाट) in between the disputed lands. The plaintiffs will not become landless because defendants ready to leave the space on their own field for creation and establishment of way therefore, the plaintiffs will not suffer irreparable loss. The prayer of defendants regarding declaring of way from land Gat no- 1427 and 1429 is small land /way (पाऊलवाट) which goes is straight way and there is no hindrance. The panchnama of dated 25/11/2021 shows that defendants are having no alternative way for coming and going purpose. Therefore, the Tahasildar has confirmed and upheld the order of predecessor Tahasildar.

12. Heard learned advocates of plaintiffs and defendants. Both have relied upon cited authorities of honorable High courts and Supreme Courts. They also relied upon photographs and map. The learned advocate of plaintiffs vehemently argue that from land Gat no. 1427 and 1429 there is no way. In land Gat no. 1427 there is house and cattle shed the plaintiffs will suffer irreparable loss the order of Tahasildar is not acceptable which violating the legal right of plaintiffs. The plaintiffs submit that the Tahasildar has no right under Section 143 of the Maharashtra Land Revenue Code to declare the way. The Tahasildar has passed the order that there is way from land Gat No. 1427 which is owned and possessed by plaintiffs. The Tahasildar has not considered the evidences produced on record. The order is affecting to the rights of plaintiffs.

13. On the contrary the learned advocate of defendants argued that plaintiffs are not come with clean hands. There is existence of way in between the disputed lands. The plaintiffs are

obstructing to the defendants for use of way. Plaintiffs have not made the party to Tahasildar. Moreover, the suit of plaintiff is hit by order 7 rule 3 of C. P. C. The Tahasildar has rightly come to the conclusion and pass the judgment.

14. The plaintiffs relied upon the cited authority of **Hon'ble Bombay High Court Bench Nagpur, Krushna Son of Damaji Choudhary and Others v/s Additional Commissioner Nagpur Division 2012(2) All MR 337 12th October 2011**. Wherein, the Hon'ble High court has considered that application under section 143 M. L. R. Code cannot be treated as suit under section 5 of Mamlatdars Court Act. The Court held that the Tahasildar passed the order holding that there is right of way from the boundaries and directed removal of obstructions the learned advocate of plaintiffs argued that under section 143 of M. L. R. Code the Tahasildar cannot exercise power of removal of obstruction. Finally, the Hon'ble High Court held that order passed by authorities below quashed and set aside only to the extent that it directs removal of obstructions in the way through boundaries of survey no 427 and 429. For the convenience I am reproducing the section 143 of M. L. R. Code as under.

Sec 143 right of way over boundaries

1. The Tahasildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.
2. In deciding such claims, the Tahasildar shall have regard to the needs of cultivators for reasonable access to their field.
3. The Tahasildar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this code.

4. Any person who is aggrieved by a decision of the Tahasildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.
5. Where a civil suit has been instituted under sub-section (4) against the Tahasildar's decision, such decision shall not be subject to appeal revision.

15. The Tahasildar is empowered to decide claim of right of way over the boundaries of other survey numbers. The plain reading of above cited authority restrict the power of Tahasildar to the extent of removal of obstructions in the way through boundaries of survey of other survey numbers. In the present case, the Tahasildar has not passed the order on removal of obstruction. He simply decided the claims of parties to suit. Hence, this authority is not helpful to the case of plaintiffs.

16. The plaintiffs further the relied upon cited authority of **Hon'ble Bombay High Court Bench Nagpur Keshav Vitthoba Khatdev and Others v/s Gopal Sakaram Mundare 2014(4) ALL MR 170 March 2014**. This authority is concern S.100 of C.P.C. (1908) and S.15 of Easements Act (1882), and S. 143 Maharashtra Land Revenue Code (1966), in this authority the dispute regarding over right of way, the trial Court and 1st Appellate Court relied on map, report of Commissioner lawyer. The Hon'ble Court found that sale deed did not show such way on dhura. Further it found that merely because it will be convenient for defendants to use said way. Civil Court converted sympathy into creation of way, over dhura of plaintiff. It was further observed that the Civil Court should not have pass the order regarding way because creation of such right and inquiry in such rights or claims even for reasonable access or over the

boundaries for that matter should be left to the land and survey and revenue officers, who do have expertise in their working. The Court held that the defendants do not have any right to pass through or use south-east for approaching there field except any inquiry and decision in to any claim by competent authority. In this regard I am the view that this authority is not helpful to the plaintiffs as the dispute or claims in the present case is decided by the competent authority.

17. On the contrary the defendants relied upon the cited authority of the Apex Court in **2008 0 AIR (SC) 2291 in Mondaly Ranganna and Others etc v/s T Ramchandra and Others in Civil Appeal No. 3128-3129/ 2008** relying the observation held In **Seema Arshad Zaheer and Others v.s Municipal Corpn. Of Greater Mumbai and others [(2006) 5 SCC 282]**, Apex Court observed that:

“30. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (I) Existence of a prima facie case as pleaded, necessitating protection of the plaintiffs rights by issue of a temporary injunction; (II) when the need for protection of the plaintiffs rights is compared with or weighed against the need for protection of the defendants rights or likely infringement of the defendants rights, the balance of convenience tilting in favour of the plaintiff; and (III) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the Court with clean hands.”

18. The defendants further relied upon cited authority of **Apex Court 2010 AIR (SCW50) Case No. Civil Appeal No. 5239/2002**. Wherein the Hon'ble Apex Court observed that in order

to meet the challenges posed by this new creeds of litigants, the Courts have from time to time evolved new rules and its now well establish that a litigant who attempt to pollute the stream of justice or who touches the pure fountain of justice with tented hands is not entitled to any relief, interim or final.

19. After reading of supra precedents, I do agree with the observation and adjudication of Hon'ble Courts. The plaintiffs in para No. 2 of plaint asserted that there is way over the disputed side. But in hearing argued that there are houses and cattle-shed in land Gat No. 1427 of eastern side. Therefore, the plaintiffs have not come with clean hands. Hence, these authorities are helpful to the case of defendants.

20. The defendants further relied upon cited authority of **Apex court AIR 2007 1499 Civil Appeal No. 6413/2000 Mehar Chanddas V/s Lalbabu Siddik and others**. It was observed that:

“Apart from the fact that in such a suit the plaintiff was bound to establish fraud or want of jurisdiction on the part of the collector, to grant a parcha in favour or the tenant, the collector was a necessary party. In absence of the collector, therefore, the suit could not have been decreed.”

21. Defendants submit that the plaintiffs in their plaint para No. 4 pleaded that the Tahasildar has pass the order under the political pressure. In this regard I am of the view the Tahasildar has passed the judicial order empowered to him by Section 143 of C. P. C. Hence, this authority is not helpful to the defendants at this stage.

22. Perused the sale deed bearing No. 1290/4/16/2009 presented in favour of defendant No. 1 Dattaji Hindurao Suryawanshi of land Gat No. 1428 H.R.0.79 in its four boundaries of Eastern side there appears land of Shankar Dattu Suryawanshi who is the father

of plaintiff No. 4 viz., Somesh Shankar Suryawanshi. While the plaintiffs in their plaint mentioned in the description of land Gat No. 1427 that in western side there is land Gat No. 1428 belonging to defendants. Thus, as per sale deed the defendants have no right of way towards Eastern side.

23. Plaintiffs have filed map of village Ankalkhop alongwith plaint. On perusal of the map appears that the land Gat No. 1428 starts from western side and ends to eastern side i.e. land Gat No. 1427. Hence, there appears no alternative way for the defendants. However, the defendants draw my attention towards the certified copy of Exh. 1 of R. C. S. No. 100/2019 containing plaint and map. On perusal of map filed by plaintiffs on 15/04/2019, it appears that there are houses and cattle-shed and there is straight way towards Eastern side.

24. Thus, admittedly there are two maps filed by plaintiffs themselves. In one map of village Ankalkhop, there appears no way towards eastern side in land Gat No. 1427. While in another map dated 15/04/2019, there appears way towards eastern side in land Gat No. 1427.

25. Thus, after detail discussion supra I am of opinion that the map filed by plaintiffs earlier shall be given weight-age. As per the obstruction in ruling of **Keshar & Others v/s Gopal & Others** supra the present case is decided by Revenue, Survey Officer. The Tahasildar come to conclusion allowing case of defendants by taking into consideration the both panchnamas, though having clear disregard of order passed by earlier Tahasildar by S. D. O. and Deputy Collector. The panchnama dated 27/11/2018 dated manifest that in eastern side of land Gat No. 1429 and in land Gat No. 1427. There is temporary (गाडीवाट) cart way and in the same way as per

map, there is way in land Gat No. 1428 in between land Gat No. 1427 and 1429. In the panchnama dated 25/11/2019, it can be seen that in the Audumbar to Amnapur way there is boundary of land Gat No. 1427. At the first, in land Gat No. 1427 there are houses and cattle-shed and sugar-cane is sown. In the same way, in land Gat No. 1427 to 1429 annexed to way east-west there is way (पाऊलवाट). Further, in land Gat No. 1428 the sugar-cane is sown and there is no alternative way for transportation. Thus map filed by plaintiff dated 15/04/2019 and both panchnamas corroborate and are in consonance with each.

26. Therefore, order of Tahasildar does not require interference. The Tahasildar has allowed the defendants, the way from land Gat No. 1428 towards east from Gat No. 1427 to 1429 sarbandh 10 ft. width way. As per the Maharashtra Land Revenue Boundaries and Boundary Marks Rule 4 while read thus as under:

“Authorised boundary marks and survey marks. The following boundary marks and survey marks are authorised:

(A) Boundary marks: Continuous Marks:

- (1) A boundary strip.
- (2) Dhuras, Sarbandhas or hedges and other permanent continuous structures such as walls.

Discontinuous Marks:

- (3) Roughly dressed long stones,
- (4) pillars of cut stone, or masonry pillars of cement, mortar of burnt brick in cement or motor embedded in the ground with the foundations stepped down,
- (5) Prismatic, rectangular or conical earthen mounds or cairns (buruz) of loose stones,
- (6) Any other marks found suitable for special localities which

may be sanctioned by the Director such as, teak posts in the marine marshes on the Konkan coasts:

Provided that, the Collector may permit the holders of land to substitute for one kind of mark any other authorised mark within such limits as the Director by any general special order define in that behalf.

(B) Survey Marks:

(1) Roughly dressed traverse stones of such size as may from time to time be prescribed by the Director with a cross cut on the head.

(2) Any other survey mark that may be prescribed by the Director to suit the requirements of any area specified by him in this behalf.

4. Maintenance of continuous boundary marks. The boundary strips, Dhuras, or ridges shall not be ploughed up or otherwise injured by cultivation they shall also be kept free from tree growth, any young plants being destroyed at inspection time.

The minimum width and height of boundary strips and of Dhuras or Sarbandhas shall be follows, namely:

Boundary strip, In dry crop lands, 0.46 meter wide and 0.61 meter high.

Dhuras or sarbandhas 1.22 meters wide and 0.61 meter high.”

27. Thus, as per the Rule minimum width and height of boundary strips and Dhuras or Sarbandhas should be 1.22 meter wide and 0.61 meter high. It means maximum may be width and meter may be higher as required. Therefore, order of Tahasildar is to be sustained. The Ld. Advocate Shri. V. B. Shinde argued that legal right of plaintiffs is defeating by the order of Tahasildar which is liable to be quashed and set aside, in this regard, I am of view that defendants have no alternative way for transportation and conveyance. They have sown sugar-cane. Hence, it becomes

necessary to grant way for the said purpose. Thus, plaintiffs have not made out prima facie case and balance of convenience does not lie in favour of plaintiff. Hence, question of irreparable loss is out of consideration. The injury a loss suffering by plaintiffs is reparable while losses suffered by defendants are irreparable. Hence, I pass the following order.

ORDER

1. Application stands rejected.
2. Costs in main cause.

(Dictated & pronounced in open court)

Sd/-

Date:28/06/2022
Palus

(I. A. Y. A. Khan)
Jt.Civil Judge Jr.Dn., Palus

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original.

Name of Stenographer	: Mrs. S. V. Kadam Stenographer Grade III
Court	: Jt. C.J.J.D. & J.M.F.C., Palus
Date	: 28/06/2022
Signed by P. O. on	: 28/06/2022
Uploaded on	: 29/06/2022