

ORDER BELOW EXH.5**IN****Reg.Civil Suit No.9 of 2019****(I.A.No.1/2019)****CNR NO.MHSO06-0001872019**

This is an application under O-39, Rule 1 and 2 of the Code of Civil Procedure, requesting to restrain the defendant Nos.1 to 5 and 10 from creating road on the basis of the order dt.04.06.2018 passed in Rasta Case No.214/2018.

In brief the plaintiffs' case is as under :

2. The plaintiffs are owners and possessors of the block No.707/2/B/1 situated at village Chale, Taluka Pandharpur, District Solapur. The defendant No.5 had filed Rasta Case No.214/2018 against the plaintiff No.1 and defendant No.6 to 12. In the said case the defendant No.2(Tahsildar) has passed order dt.04.06.2018, directing to remove the obstructions in the road, holding that, the road is exist through the properties of plaintiffs and defendant Nos.6 to 12. Said road is the suit property. Before this case, the defendant No.5 had filed another case bearing No.8/2012 and 15/2008 in which the case of existence of road, has been rejected by the defendant No.2. Said decision was not challenged, but the defendant No.5 again filed a new case i.e. Rasta Case No.214/2018, in which contrary view has been taken holding that, the road is exist. All cosharers of the Block Numbers through which the road is shown to have exist, are not made party to the said Rasta case. Under the political pressure, the decision has been given by defendant No.2. The request for police aid has been also allowed by the defendant No.2. At the southern side of the said road there exist road proceeding from Chale to Kharasoli. The villagers of village Chale are using said road. The defendant

No.5 is also using that road. The decision of defendant No.2 is against the law. On 11.08.2018 the Sub-Divisional officer has visited the suit property. On 21.01.2018 the defendant Nos.2 to 5 in collusion tried to create road through the suit properties. The plaintiff No.2 was not party to said Rasta Case. She had filed R.C.S.No.344/2018, in which order of injunction against defendant 5 and 10 is passed. According to the plaintiff, if the defendant Nos.1 to 5 and 10 continued with their obstruction, it will cause irreparable loss to the plaintiffs. Hence, to restrain them this application is filed.

3. The application is opposed by the defendant Nos.1 to 4 vide say below Exh.42. They denied the contents of the application. According to them, the suit road was exist since long. There is village map to that effect. Sub-Divisional officer has visited the suit site on 11.08.2018. Tashildar also inspected the suit site and accordingly has passed order allowing the application of the defendant No.5. At the southern side of Block No.270 and 271 there exist road proceeding from Chale to Tarapur. Tahsildar carries duty to remove the obstruction made on the road exist. The order passed by Tahsildar is legal. The plaintiff by filing various suits are harassing the defendants. The village map shows existence of road across the Block No.270, 271 and 707. With these contentions they have prayed to reject the application.

4. The application is opposed by the defendant No.5 and 10 vide say below Exh.31. They denied the contents of the application. It is their contention that, Block No.707/2/B/1 is the ancestral property of the plaintiffs' and defendants' joint Hindu family and the plaintiffs possess it for the joint family. The defendant No.5 has filed R.C.S.No.421 of 2018 for the partition of the said property. The plaintiffs have suppressed this fact. The plaintiffs are

misleading by demonstrating the existence of Chale to Kharsoli road. Against the decision of Tashildar one Mr. Harish and Ananda More have filed R.C.S.No.373 of 2018, in which there is order of injunction. These defendants have preferred appeal against said order. Chale to Tarapur road is exist in the village map and it is shown with the dotted line. Map shows that, said road proceeds across Block No.707/2/B/1, Block Nos.268 and 270. Since beginning said road was exist, however, the plaintiffs and other holders of the lands from which this road proceeds have destroyed it. Due to said obstruction, these defendants are unable to approach village Chale. There is no alternate way. Said road also proceeds across the lands of defendant No.5, bearing Block No.271/6 and 271/7. It also proceeds from the land of defendant No.10 bearing block No.271/9. Due to said obstruction, the defendant No.5 had approached to the Tahsildar by filing an application under Section 5 of the Mamlatdar Court's Act. Said application was allowed by order dt.04.06.2018. At the time of execution of said order, the plaintiffs filed R.C.S.No.844/2018 before the Court of Civil Judge, Senior Division , Pandharpur and obtained the order of Status quo. Due to pendency of R.C.S.No.844 of 2018, in view of Section 10 of C.P.C., this suit is required to be stayed. The plaintiffs have already filed Revision Application against the order of Tahsildar and therefore, for the same relief, this suit is not maintainable. The order of injunction will cause irreparable loss to these defendants. These defendants have no approaching way to their fields. With these contentions, these defendants have prayed to reject the application.

5. Heard Learned Advocate for the plaintiffs and the defendants No. 5 and 10. No argument of the defendant Nos.1 to 4. The application is not pressed against the defendant Nos.6 to 9 and 11, 12. Points for determination along with my findings thereon are as follows:

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiffs have prima-facie case?	Yes
2. In whose favour balance of convenience lies ?	In favour of the plaintiffs
3. To whom irreparable loss will be caused ?	To the Plaintiffs
4. What order ?	The application is allowed.

- R E A S O N S -

AS TO POINT Nos.1 to 3 :-

6. All these points are interlinked with each other and to avoid repetition of findings, they are taken together for adjudication. This suit and interalia this application is mainly concern with Rasta Case No.214/2018. It is alleged by the plaintiffs that, the order dt.04.06.2018 of defendant No.2 in said case is illegal. It is contended that, previously Rasta Case No.8/2012 & 15/2008, filed by the defendant No.5 and his nephew, have been dismissed by Tahsildar and in spite of this fact Rasta Case No.214/2018 has been allowed. It is further alleged that, on the basis of said decision dt.04.06.2018 of Rasta Case No.214/2018, there was an attempt to create road across the plaintiffs' property and therefore, there is obstruction to the plaintiffs' possession. On this background it is required to verify whether prima facie there is substance in the plaintiffs' contention regarding process adopted by the Tahsildar while deciding last Rasta case. It is also required to verify whether due process has been adopted by Tahsildar. It makes me to go through the provisions of The Mamlatdars' Courts Act, 1906 (hereinafter referred as 'Act') and the relevant documents in that regard.

7. The copy of judgment of Rasta Case No.8/2012 Exh.4/6 shows that, the defendant No.5 had filed the suit against the plaintiff No.2 and one

Mrs.Avinda More in respect of the properties including the plaintiffs' block No.707/2/B/1. It shows that, the Tahsildar while deciding this suit has held that, Chale – Tarapur road does not proceed across the lands of the applicants and opponents but it proceeds from the southern side of these lands. It was also held that, there is no obstruction by the plaintiff No.2 and accordingly said suit for removal of obstruction to the road has been dismissed in the year 2013.

8. The judgment and order in Rasta Case No.214/2018 Exh.4/1 shows that, the defendant No.5 again filed this case before same authority in respect of same road including the plaintiff No.1, said Mrs.Avinda More and others. Tahsildar by judgment and order dt.04.06.2018 allowed this case and held that there exist such suit way. On consideration and comparison of both the decisions of Tahsildar, prima facie it shows that, in respect of same dispute, same subject matter and in respect of the some of the same parties, the same authority has entertained two suits one by one and delivered the verdict contrary to its earlier decision. It prima facie shows that, there is violation of principle of natural justice. Same authority for the same dispute cannot give decisions contrary to each other. The judgment of Rasta Case No.8/2012 and 214/2018 are contrary decisions with regard to same dispute. The provision of Section 26(b) of the 'Act' provides that, no suit shall lie in respect of removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceeding, to which the plaintiff or his predecessor in interest was a party, under this 'Act'. In view of this provision if the dispute presented in Rasta Case No.214/2018 has been already decided in previous proceeding i.e. Rasta Case No.8/2012, then Rasta Case No.214/2018 was required to be held as not maintainable in view of Section 26(b) of the 'Act'. Section 26(b) opens with the words 'no suit shall lie' and therefore, it mandates the Tahsildar, not to entertain the subsequent case

in respect of which dispute is already resolved in previous case. Therefore, there is prima facie substance in the plaintiffs' contention that the judgment in Rasta Case No.214/2018 suffers from infirmity.

9. It is the contention of the plaintiffs that, in respect of same dispute the defendant No.5 had filed Rasta Case No.15/2008 and 8/2012. The judgment of Rasta Case No.8/12 Exh.4/6 is on record. Prima facie it appears that, the dispute in respect of said road is going on since 2008 or 2012. Section 5(3) of 'Act' provides limitation of six months from the date of cause of action, for filing such case. Circumstances on record, as aforesaid show that, the cause of action for the dispute in regard to the suit road arose in the year 2008 or 2012, therefore, by considering the limitation of six months from the date of cause of action filing of Rasta Case No.214/2018 is appears to be not within limitation. Therefore, prima facie there is substance in the plaintiffs' contention that, the Tahsildar override the jurisdiction vested in him.

10. The 7/12 extract Exh.4/5 shows that, the plaintiff Nos.1 and 2 are the joint owners of block No.707/2/B/1. Rasta Case No.214/2018 was filed only against the plaintiff No.1 and not against the plaintiff No.2. The judgment and order of this case materially affects the rights of the plaintiff No.2 as she has equal rights in said property. Therefore, execution of the order of said Rasta case cannot proceed against the plaintiff No.2. For this reason said order suffers infirmity.

11. It is the contention of the defendants that, the suit road is in existence since long and the plaintiffs, other holders have obstructed it. The defendant Nos.5 and 10 relied on the affidavits of villagers Mr.Uttam and Tukaram (Exh.45 & 46). By relying on the village map Exh.48/1 they urged

that, the dotted line in the map shows the existence of suit road and therefore, they have right to use said road. In the present suit the main dispute is with regard to the legality of the judgment and order passed in Rasta Case No.214/2018. It is the contention of the defendant Nos.5 and 10 that, there is no alternate way to approach them to village Chale. In the judgment of Rasta Case No.8/2012 there is observation that, the way is exist from the southern side of the plaintiffs' property. If the villagers of Chale, Tarapur including the defendant Nos.5 and 10 were using the suit road since long then there could have been many applications of the villagers of both these villages to Tahsildar requesting to remove the obstruction of the suit road. No such applications appears to have been made by any of the villagers excluding the defendant No.5 and 10. Prima facie it shows that, the circumstances are otherwise than pleaded.

12. As aforesaid prima facie the subsequent Rasta Case No.214/2018 was not maintainable. Said case was out of limitation. The plaintiff No.2 was not party to said case and therefore, the decision in said case will not be executed against her. All these facts prima facie show that, the decision in Rasta Case No.214/2018 suffers from infirmity and therefore, on the basis of this decision there cannot be execution to open or create a road. If said decision is put into execution, it will affect the plaintiffs' rights. The decision which is prima facie appears to be not proper will be executed. The due process appears to have not been followed. Therefore, the plaintiffs' have prima facie case.

13. Under the aforesaid circumstances if the judgment in Rasta Case No.214/2018 is put into execution it will cause irreparable loss to the plaintiffs. The judgment in favour of defendant No.5 and 10 appears to be not

legal and proper and therefore, balance of convenience is in favour of the plaintiffs. For the same reasons the execution of said decision and the obstruction because of same will cause irreparable loss to the plaintiffs. In view of these findings I answer point No.1 in the affirmative and point Nos.2 and 3 in favour of the plaintiffs.

AS TO POINT No.4:-

14. In view of my findings to point Nos.1 to 3, the application is liable to be allowed. In the result, in answer to point No.4, I pass the following order.

ORDER

1. The application Exh.5 is allowed.
2. Until the decision of this suit, the defendant Nos.1 to 5 and 10 are restrained by order of interim injunction from creating suit road across the plaintiffs' property in view of order dt.04.06.2018 passed in Rasta Case No.214/2018.
3. Costs shall follow the event.

Sd/-

Pandharpur
Date:-04.05.2019

(R.A.Sasne)
Civil Judge Senior Division,
Pandharpur

CERTIFICATE

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

Name of Stenographer : Kondekar B.R.
Court Name : Civil Court Senior Division, Pandharpur
Date 04-05-2019

Order/Judgment signed
by the Presiding Officer on : 04-05-2019

Order uploaded on : 04-05-2019