

R.C.S. No.103/2022

Gajendra and others Vs.

Dhiraj + 1

ORDER BELOW EXH.05.

The plaintiffs have described the suit property in para No.1A, 1B and 1C of the plaint and have prayed for relief of temporary injunction as per provisions of Order 39 Rule 1 & 2 of the Code of Civil Procedure for restraining defendants from interfering with their peaceful enjoyment of approach way through the suit property.

2. Defendants filed their detail reply at Exh.15. They have also filed counter claim at Exh.23.

3. Heard learned advocate Shri Bhadule for the plaintiffs. He took me through the documents listed below Exh.04. It is his contention that ownership of the plaintiffs over the suit property has been not disputed by the defendants.

4. Learned advocate Shri Bhadule pointed out from the contents of the Exh.05 that the suit property is being cultivated by the plaintiffs since year, 1978. He contended that the defendants attempted to construct new road through the suit property thereby adversely

affecting its enjoyment. It is his contention that existing road within the suit property is not a public road and only plaintiffs are entitled to enjoy it. He would contend that the defendants have instituted a road case before the Tahasildar, Pandharpur as per the provisions of Section 5 of the Mamlatdars Court Act. He pointed out that the learned Sub-Divisional Officer has reverted back the proceeding to the Mamlatdar for deciding afresh.

5. Learned advocate Shri Bhadule pointed out that there is an approach way on the eastern boundary of the three properties for daily use. He contended that the defendants have claimed south-north running road through the suit property with intention to cause losses to the plaintiffs' crops. He also pointed about incident dated 02.02.2022 and contended that defendants used muscle power and took help of *Gunda* elements and thrashed out the plaintiffs. He would contend about lodging of crime No.34/22 for offence punishable under Sections 324, 323, 504 & 506 read with 34 of the Indian penal Code. He would contend about prima facie case in favour of the plaintiffs, tilting of balance of convenience and irreparable losses caused to the plaintiffs.

6. Defendants have denied the plaintiffs' cause in

their reply at Exh.15. The defendants have come with the case that plaintiffs' gat No.1463 has been formed after amalgamation of survey No.740/1/B, 740/1/C, 741/1/B, 741/1/C. They have also stated that gat No.1462 has been formed after amalgamating survey No.740/1/A, 741/1/A. The say speaks about existence of approach way from *bundh* of survey No.740 and 741 to survey No. 738 and 739 qua Bardi-Karkambh Road. Say also reflects about existence of Zilla Parishad, Primary School in nearby Gat No.1464.

7. The reply by the defendants also speaks about institution of Road Case No.32/2020 and the order of Tahasildar, Pandharpur for construction of the road through suit property. It also states about Revision Application No.28/2022 wherein, matter has been remanded back to the Tahasildar, Pandharpur for decision afresh. The defendants submit about absence of prima facie case in favour of plaintiffs and prayed for rejection of the application.

8. On the basis submissions made perusal of documents and analysis of materials available, following points arise for my consideration and are answered with the reasons as under :

Sr. No.	Points	Findings
1	Whether there exist prima facie case in favour of the plaintiffs ?	No.
2.	Whether the balance of convenience tilt in favour of the plaintiffs ?	No.
3.	Whether the plaintiffs would suffer irreparable losses ?	No.
4.	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 TO 4 :

9. The 7/12 extract at Exh.4/1 to 4/3 clearly speaks about ownership of all the plaintiffs over the suit property. In fact, defendants have not challenged or disputed the ownership of the plaintiffs over the suit property. The winnowing of the contents of the present application would reveal that the dispute arose between parties on 02.02.2022, when defendants allegedly tried to use approach way through suit properties. The dispute resulted into lodging of Crime No.34/2022. A copy of F.I.R. is at Exh.4/4. Thus, the dispute between the parties is revolving around the approach way through the suit

property. The plaintiffs assert that they are cultivating grapes in the suit property since year, 1978. The plaintiffs are approaching the suit property through Karkambha-Bardi *Shiv* road situated on the **eastern** boundary. Gat No.1459/2 is allegedly owned by the defendants and it is situated on the western side of the gat No.1462. The plaintiffs are claiming that no road existed through the suit property for use by defendants and other peoples. They are claiming that the approach way through the suit property is only for their use.

10. Now, switching to analysis of the written statement, which is supported by consolidation list (Exh.22/2). The consolidation list speaks about consolidation of Gat No.740/1/A and Gat No.741/1/A. It also speaks about creation of gat No.1462 after the consolidation of gat No.740/1/A & 741/1/A. The contention by the defendants about formation of new gat No.1462 after consolidation of Gat No.740/1/A and 741/1/A is supported by consolidation list (Exh.22/2). Thus, it becomes clear that prior to its consolidation gat No.1462 existed in two separate parts.

11. The consolidation list (Exh.22/2) further reveals that consolidation of Gat No.740/1/B, 740/1/C,

741/1B, 741/1C resulted into creation of gat No.1463. In other words, prior to consolidation, gat No.1463 consisted of four parts. Existence of primary school in gat No.1464 is also not disputed. There is an approach way to the Zilla Parishad school. The said approach way is used by public and children. Therefore, considering four boundaries of the suit property as well as properties owned by the defendants, there appears existence of approach way since prior to consolidation. Therefore, the plaintiffs have failed to prima facie show absence of any approach way through suit property. I answer point No.1 in Negative.

12. It is the case of the plaintiffs that they are cultivating crops in the suit property since year, 1978 and till 02.02.2022 there has been no obstruction to their enjoyment of the suit property. It appears that defendants have tried to take their bullock cart through the approach way, which act has been restrained by the plaintiffs. Thus, it appears that restraining act has first taken place on the act of the plaintiffs. The contention by learned advocate Shri Bhadule and materials relied upon by him do not demonstrate irreparable loss to the plaintiffs, if the approach way is used by the defendants. So, the balance

of convenience also do not tilts in favour of the plaintiffs.

13. As a fall out of above discussion, the plaintiffs have failed to make out prima facie case to demonstrate irreparable loss and to establish balance of convenience in their favour thereby, resulting in negative answer to all the points. The application is bereft of merits. It is hereby rejected with the order as under :

: O R D E R :

1. The application (Exh.05) is hereby rejected.
2. The order is dictated in open court.
3. The order is digitally signed.

Date : 04.01.2023.

[A. R. Yadav.]
Jt. C.J.J.D, Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/ Order is same word to word as per the original.

- a Name of the Stenographer : R.M.Gogi
- b Court : Jt. C.J.J.D.& J.M.F.C., Pandharpur.
- c Date of Order : 04.01.2023
- d signed by P.O. on : 04.01.2023
- e Uploaded on : 04.01.2023