

**R.C.S. No.103/2022**

Gajendra &amp; others Vs. Dhiraj +1

**ORDER BELOW EXH.25.**

The present application has been moved by the original defendant-counter claimant as per provisions of Order 39 Rule 1 & 2 of the Civil Procedure Code for restraining the original plaintiffs i.e. counter claim defendants from obstructing with enjoyment of cart way running north-south direction through southern boundary of counter claim property.

2. In the counter claim gat No.1460/2 & 1459/2 situated Mauja : Karkambh, Pandharpur are arrayed as the counter claim suit property and their description has been clearly mentioned in the counter claim and in the para No.1 of the present application. The counter claim defendants - original plaintiffs have filed detail reply at Exh.30 and denied the counter claim case in toto.

3. Heard detail submissions of learned counsel Shri Vyavahare for the counter claim plaintiff and learned counsel Shri Bhadule for the counter claim defendants.

4. Learned counsel Shri Vyavahare placed reliance on the consolidation list below Exh.22/2 & 22/3 and pointed out that gat No.1463 has been formed after consolidation of survey Nos.740/1/B, 740/1/C, 741/1/B and

741/1/C. He also pointed out that gat No.1462 has been formed after consolidation of survey No.740/1/A and 741/1/A. He pointed out that approach way exists between survey Nos.740 and 741 via survey No.739 and upto survey No.738. It is his contention that said approach way/cart way continues upto Bardi-Karkambh road which is situated on the southern side of gat No.1462.

5. He also took me through the observations recorded by the learned Mamlatdar in Road Case No.32/2020 instituted by present counter claim plaintiffs. He also placed reliance on the spot panchnama prepared by the Circle Officer, Karkambh. It is his submission that the Mamlatdar has placed reliance on the spot panchnama prepared by the Circle Officer. It is his contention that existence of cart way on the boundary of gat Nos.1464, 1465, 1463, 1460 & 1462 is clearly mentioned in the panchnama and in the order passed in Road Case No.32/2020 by the learned Mamlatdar. He also pointed out that in the Revision Application No.28/2022, the learned Sub-Divisional Officer, Pandharpur has nowhere observed about absence of said cartway. It is his contention that there exists Primary School in gat No.1464 and there is a approach way to the said Zilla Parishad School. The said approach way / cartway is used by the public and children.

6. Learned advocate Shri Vyavahare also contended that the fact about obstruction at the hands of counter claim defendants is clearly recorded in the order of Mamlatdar and in the spot panchnama by the Circle Officer. He also placed reliance on Google Map listed below Exh.22/1, to show existence of the cartway extending from Bardi-Karkambh road through the land of the counter claim defendants and up to the land of counter claim plaintiffs.

7. Per contra, learned advocate Shri Bhadule made very lengthy submissions taking about one and half hours. He read out the Judgment passed by the learned Mamlatdar in Road Case No.32/2020 and judgment and order passed by the Sub Divisional Officer in Revision Application No.28/2022. Learned counsel Shri Bhadule further referred to section 26 of the Mamlatdar's Court Act.

8. Learned counsel Shri Bhadule also read out the entire spot panchnama prepared by the Circle Officer, Karkambh and contended that the panchnama do not speaks about any obstruction at the hands of the counter claim defendants.

9. Learned advocate Shri Bhadule pointed out that the Order passed by the Mamlatdar was not in accordance

with provisions of Mamlatdar's Court Act. Therefore, with that observations, fresh decision has been directed by learned Sub-Divisional Officer in Revision Case No.28/2022. Learned counsel Shri Bhadule vehemently contended that there exists no approach way / cartway to gat Nos.1460/2 and 1459/2.

10. He also took me through Google Map and coined a term for it as a "Drone Map". He pointed out that said drone map (Exh.22/1) is false, manipulated and prepared by over lapping of Gats and it cannot be relied upon. He also contended that the Google map is not admissible as it is not supported by certificate under Section 65 B of the Evidence Act. It is his submission that if, the counter claim plaintiffs are allowed to use cartway through the properties of counter claim defendants, it would cause irreparable losses. He submitted that there exists no prima facie case in favour of the counter claim plaintiffs. He also contended about the absence of irreparable loss and balance of convenience in favour of counter claim plaintiff & prayed for rejection of application.

11. In view of materials placed on record and counter submissions made by the counsel, following points are available for my consideration and are answered with

the reasons as under :

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether their exists prima facie case in favour of counter claim plaintiffs ?	Yes.
2.	Whether the balance of convenience tilts in favour of the counter claim plaintiffs ?	Yes.
3.	Whether the counter claim plaintiffs would suffer irreparable losses ?	Yes.
4.	What order ?	As per final order.

### **Reasons**

As to point Nos.1 to 4 -

12. There is no dispute about ownership of counter claim plaintiffs over the gat No.1460/2, 1459/2. Further, there is no dispute about ownership & possession of counter claim defendants over gat No.1463/1/1, 1463/1/b, 1462. The dispute revolves around cartway to the gat Nos. 1460/2 & 1459/2 through the boundaries of gat Nos.1463/1/a, 1463/1/b and 1462.

13. The perusal of the record reveals lodging of Crime No.34/22. The copy of the F.I.R. is produced at Exh.4/4 by the original plaintiffs. The counter claim

defendants asserts that they are cultivating crops in gat No.1463/1/a, 1463/1/b and 1462 since year, 1978. The counter claim defendants are claiming that no road exists through suit property for use by the counter claim plaintiffs or other persons. The counter claim defendants are claiming that the cartway is private road used only for the agricultural purposes by them.

14. Now, switching to analysis of consolidation list at Exh.22/2. It speaks about consolidation of gat No.740/1/A & 741/1/A and creation of gat No.1462. The consolidation list further speaks about creation of gat No.1463. Thus, it appears that prior to consolidation, gat No.1462 & 1463 existed in form of different survey numbers. The existence of Primary School in gat No.1464 is not disputed by both the parties. In fact, during argument learned advocate Shri Bhadule has admitted about existence of primary school in gat No.1464. But, he submits that Management Body, Children, Teachers or Guardian of Students have never complained about any such obstruction to the use of cartway by the counter claim defendants.

15. As both the counsel have read out and placed heavy reliance on the spot panchanama prepared by the Circle Officer and order passed by the Mamlatdar in Road

Case No.32/2020 and Revision Case No.28/2022, it become justifiably necessary and bounden to analysis said spot panchnama and order in search of evaluation of existence of prima facie case.

16. Spot panchnama prepared by the Circle Officer clearly reveals the chronological existence of gat Nos.1465, 1463 & 1462, 1460/2. The panchnama clearly speaks about existence of north going road starting from Bardi-Karkambh main road to the land of Bharat Sampat Zende. The panchnama further speaks that Bharat Sampat Zende owns land bearing gat No.1463/2/A. So, in other words, the panchnama speaks about north direction running road starting from Bardi-Karkambh main road up to gat No.1463/2/A. It further speaks about existence of cart road and houses on it's both the banks. It also speaks about grapes crop in gat No.1463/1/A. It further speaks about existence of road between grapes crops and house property. It further speaks about existence of cattle shed on the road.

17. Now, switching over to observations made by Mamlatdar in Road Case No.32/2020. The learned Mamlatdar has also observed about existence of tin-shed over the approach road. It has also recorded the chronological existence of gat numbers and existence of

approach road to gat No.1462/2.

18. Now, switching to materials in order in Revision Case No.28/22. It has been observed by the Sub Divisional Officer that the Mamlatdar has not recorded his own findings and therefore, the matter has been remanded back for deciding afresh.

19. Both the parties have placed heavy reliance on the alleged Google map Exh.22/1. Therefore, the analysis of said map is required for tracing out prima facie case. It appears that four directions have been mentioned over it in ink. The properties of counter claim plaintiffs and counter claim defendants are also marked over it. It also shows faint way emanating from Bardi-Karkambh Road and going northward. It shows green color on its some parts of western boundary.

20. The analysis of consolidation list Exh.22/1, Google map Exh.22/2, spot panchnama prepared by the Circle Officer reveals about prima facie existence of cartway upto gat Nos.1460, 1460/2, 1459/2 and beyond. Said cartway appears to be passing through properties owned by the counter claim defendants. The panchnama also speaks about act of the counter claim defendants in restraining the counter claim plaintiff from using cartway. Hence, the evaluation of materials would reveal prima

facie existence of case in favour of counter claim plaintiff. The answer to point No.1 in affirmative.

21. It is the case of the counter claim defendants that they are cultivating grapes crops since year, 1978. Similarly, counter claim plaintiffs are also taking crops in court claim properties. There is no material to show on the record that earlier any obstruction existed by counter claim defendants to counter claim plaintiffs. But, after incident dated 02.02.2022, which resulted into lodging of F.I.R., the situation is changed. If, the counter claim defendants are allowed to restrain counter claim plaintiffs from using the bullock cartway, the latter would suffer losses and thereby causing inconvenience. As discussed supra, both the counsel have placed much reliance on the spot panchnama prepared by the Circle Officer, but none of them have placed any materials to prima facie disbelieve its contents. No prima facie material produced by the counter claim defendants to show that the spot panchnama is prepared under undue influence or hit by act of fraud or coercion. As fall out of above discussion, the counter claim plaintiff has succeeded in establishing the balance of convenience in his favour and irreparable losses. The answer to point Nos.2 to 3 are in affirmative. Accordingly, the application is allowed with the order as under :

**ORDER**

1. The application (Exh.25) is hereby allowed.
2. The counter claim defendants (original plaintiffs), their agents, representatives, or any other persons acting on their behalf are hereby restrained from creating obstructions to the use of existing cart way for going to gat No.1460/2, gat No.1459/2, Mauja : Karkambh, Taluka-Pandharpur without following due procedure of law.
3. The order is dictated in open court and taken down in short hand.
4. The order is digitally signed.

Date : 05.01.2023.

[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 : 05.01.2023
- d signed by P.O. on : 05.01.2023
- e Uploaded on : 07.01.2023