

Order passed below Exh.5 in RCS No.858/2010

The present application is filed to ad-interim mandatory injunction directing the defendant No.1 to 5 and 7 to open suit way as mentioned in plaint Para No.1C.

2. In short, it is contention of the plaintiff that, he has purchased suit property 1A from defendant No.2 and suit property 1B from defendant No.1. Both sale-deeds are executed on 06.02.2007 and defendant No.3 and 7 have consented for the same. In those sale-deeds, it is specifically recited that, road as mentioned in suit property 1C is reserved for the plaintiff to approach his land. Accordingly, mutation entry No.1400 and 1401 are certified. But, now, the defendants are causing obstruction to the plaintiff to use the suit way. Defendant No.1 to 5 and 7 by demolishing the bandh cultivated on that portion. Therefore, plaintiff could not approach to his land. There is no alternate way for him to approach his land due to which he is unable to cultivate the land. Therefore, he is suffering irreparable loss. Though, he requested to defendants to open suit way by removing obstruction, but, defendants are not paying any heed to the request of the plaintiff. The plaintiff has also filed criminal case against defendants. Eventhen obstruction is still continuing. therefore it is necessary to remove the obstruction by order of ad-interim mandatory injunction. Hence, prayed to allow the application

3. Application proceeds without say of defendant No.1 to 5 and 7, as defendants failed to pay costs imposed upon them.

4. The points for determination alongwith my findings thereon are as under :

Sr.No.	Points	Findings
1	Does the plaintiff prove prima facie case ?	In the affirmative.
2	Whether the plaintiff will suffer an irreparable loss in the event of refusal to grant ad-interim mandatory injunction ?	In the affirmative.
3	Whether the balance of convenience lies in	In the affirmative.

	favour of the plaintiff ?	
4	What order?	As per final order.

REASONS

5. The Plaintiff has filed copies of 7 x 12 extracts of Gat No.195/1A1, 195/2A, extract of Mutation entry No.1400 and 1401, 7 x 12 extracts of Gat No.176/3, 190, 193/1/1, 193/1/2, 195/3A, registration certificate with Shankarrao Mohite-patil Sah. Sakhar karkhana, copies of sale-deed No.402/07 and 401/07, photographs, copy of complaint filed against defendants, registration certificate No.14335, certified copy of complaint in STC 199/2012, certified copy of report issued by Akluj police station and certified copy of deposition.

As to Point No. 1 to 3 :

6. Heard both the parties. It is argued by Adv. Shri. D. A. Fade for the plaintiff that, sale-deeds filed on record goes to show that, defendant No.1 to 2 sold out the suit property 1A and 1B and defendant no.3 and 7 have consented for the said transaction. In those sale-deeds, defendants have specifically mentioned that, plaintiff is having right to use the eastern side bandh to approach his land. Accordingly, mutation entries are also sanctioned. Therefore, those sale-deeds are binding upon defendants. In spite of that they are causing obstruction to use the suit way by plaintiff. The defendants have brought the suit way under cultivation. Therefore, the road is blocked and the plaintiff could not approach to his land to cultivate the same. Therefore, prayed to allow the application.

7. On the contrary, it is argued by Adv. Shri. S. S. Nimbalkar that, by misleading defendants, the plaintiff got executed sale-deeds of the suit properties. Therefore, recitals of sale-deeds are not binding upon defendants and the defendants have filed separate suit against present plaintiff. But, plaintiff has suppressed said fact. The photographs which are produced on record are not suit properties. If the application came to be allowed, it will

amount to grant of final relief. Therefore, same cannot be allowed. Hence, prayed to reject the application.

8. Upon hearing both the parties, though, advocate for defendants raised certain objections in his argument as discussed above. But, as mentioned above defendants failed to pay costs and therefore, their written statement is not accepted and suit proceeds without written statement and say. Therefore there is absolutely no pleading of the defendants. Therefore, whatever, argument is advanced by advocate for defendants is without having any pleading. No doubt, he can argue only on law point but, his argument to the extent of facts cannot be considered. Only law point which are raised by him regarding granting of ad-interim mandatory injunction can be considered.

9. So far as argument regarding allowing the application will amount to grant of final relief is concern, it is settled principle that, while granting ad-interim mandatory injunction, the Court shall take at most care and caution to grant relief. Unless strong prima facie case is proved by the plaintiff said relief cannot be granted. If the plaintiff succeed to prove strong prima facie case, in that event, the Court can exercise discretion to grant the relief. In present matter, advocate for the plaintiff has filed on record case law reported in, **1992 BCJ 748, Dorab Cawasji Warden Vs. Commi Sotirab Warden and others.**

10. On perusing the case law, the Hon'ble Apex Court has given certain guidelines which are necessary to be considered while granting ad-interim mandatory injunction. If those guidelines are taken into consideration and if the plaintiff prove that, the said guidelines are applicable to his matter, then, though granting of ad-interim mandatory injunction will amount to grant of final relief, even then, the Court can grant the same. Therefore, now it is necessary to see whether plaintiff has proved the strong prima facie case in his favour and whether irreparable loss will cause to him.

11. As per the contention of the plaintiff, he has purchased suit property 1A and 1B from defendant No.1 and 2. Defendant No.3 and 7 are consenting

parties to those sale-deeds. On perusing the copies of sale-deeds which are filed on record, it appears that, plaintiff has purchased the properties as mentioned above. As defendant No.1 and 2 have executed sale-deeds and defendant No.3 and 7 have consented to the said sale-deeds, recitals in the said sale-deeds are binding upon them. They are estopped by deed from taking contrary stands. Therefore, now, they cannot said that, those sale-deeds are got executed by defendants by misleading to them.

12. Further, it is argued by Adv. Shri. Nimbalkar that, defendants have filed one suit prior to this suit. Though, it has been argued by him, but, as mentioned above there is no pleading regarding the same. Though, pleading is not there, even that fact could have been proved by producing copy of that suit. There is neither pleading nor any document in support of argument. Therefore it cannot be said that, plaintiff has suppressed material fact about prior suit between the parties. Therefore, I do not found any substance in this argument.

13. So far as contention of the plaintiff that, he is having right to use the suit way from eastern side bandh of land Gat No.173/6, 190, 193/1/1, 193/1/2 and 195/3A is concern, in the sale-deeds, it has been specifically mentioned that, plaintiff is having right to use the bandh of land Gat No.176/3, 193/1/1, 193/1/2 and 195/3A to approach his land. It also shows that, said road is in south north direction. But, in that sale-deeds, there is no mention of land Gat No.190. Therefore, by excluding land Gat No.190, it can be said that, plaintiff is entitled to use the way to approach his land. Moreover, in present matter, the Court commission was appointed after hearing both the parties, the Court commissioner report is at Exh.26. On perusing the said report and the map attached with the report, it appears that, except present suit way, no alternate way is available to the plaintiff to approach his land. As there are sale-deeds as well as commission report to show that, suit way is in existence excluding the land Gat no.190, the plaintiff has prima facie proved that, suit way is in existence.

14. Further, on perusing the commission report, it appears that, defendants have closed suit way by putting grass and kept bricks up to height of 2 to 3 feet on the eastern side suit way. Therefore, commission report specifically goes to show that, suit way is blocked by the defendants. As mentioned above there is no alternate suit way for the plaintiff to approach his land. He is unable to cultivate the suit property 1A and 1B and if said obstruction still continued further then naturally plaintiff will be deprived to exercise his rights to enjoy the property. In that circumstances, plaintiff will naturally suffer irreparable loss which cannot be compensated in terms of money. If the suit way came to be open by order of ad-interim mandatory injunction, no harm will cause to the defendants, because they themselves have given rights to the plaintiff to use the way from eastern side bandh. Therefore, strong prima facie case has been proved by plaintiff to grant ad-interim mandatory injunction. Therefore, balance of convenience also lies in favour of the plaintiff. Hence, I record my findings on point No.1 to 3 in the affirmative.

As to point No.4 :

15. In view of all above discussion and my findings on point No.1 to 3, the application deserves to be partly allowed. Hence, I pass the following order,

Order

- 1 Application is allowed.
- 2 The defendants are directed to remove the obstruction and clear the suit way which runs towards eastern side of land Gat No.176/3, 193/1/1, 193/1/2 and 195/3 अ.
- 3 Costs in cause.

Date : 21.10.2016

(R. P. Kulkarni)
Jt. Civil Judge Junior Division, Malshiras