

COMMON ORDER BELOW T.I. APPLICATION (EXH.5 & 15) IN R.C.S. NO.1162/2014

1. This is simplicitor suit for perpetual injunction along with an application for granting interim relief under Order 39 Rules 1 and 2 of the Code of Civil Procedure. By way of this application plaintiffs are claiming relief in respect of three different properties.

2. Plaintiff no.1 is the owner and in possession of Gat No.535/2A. Gat No.535/2B, which is adjoining to Gat No.535/2A, is owned and possessed in common by plaintiff no.2 and defendants. Plaintiff no.1 has his sugarcane crop in Gat No.535/2A. Plaintiff no.1 has well and bore in his Gat No.535/2A. In said Gat number there was common bore well between plaintiffs and defendants, but due to lack of water said bore well has filled up. In last year plaintiff no.1 has taken new bore well in his Gat No. 535/2A. Gat No.535/2A and Gat No.535/2B are adjoining to each other and are in East-West direction. In Gat No.535/2B there are houses of plaintiff no.2 and defendants adjacent to Akuj Sangola Road. Further there is stony bandh of 5 to 6 feet between Gat No. 535/2A and Gat No.535/2B. Defendant no.1 is collapsing the stones from the bandh over sugarcane crops in Gat No. 535/2A and making loss of plaintiff no.1. Defendant no.1 has by making midden, made encroachment in west south corner of plaintiff no.1 share in Gat no. 535/2A.

3. There is well and bore in Gat No.535/2A. From the western side of that well upto the bandh of plaintiff nos. 1 and 2 of Gat No.540/1B/2 there is PVC pipe line of 800 feet. There are two pipeline chambers in the property of plaintiffs. Defendant has broken the said chambers and thereby by stopping the water making loss to the plaintiff nos. 1 and 2.

4. Further there is common road between plaintiffs and defendants going from east west bandh of Gat No.538/1. Defendants are obstructing plaintiffs in using the said road to go to their land. Defendants are trying to close that

road by throwing stones over it and also by ploughing it. Thus, plaintiffs pray to grant relief of temporary injunction against defendant no.1.

5. Defendant nos. 1 to 3 by filing say at exh.15 resisted the application. It is contended that defendant no.1 has right to take water from the bore well in Gat No. 535/2A. It is further contended that Gat No. 535/2A is at 5 to 6 feet lower side to that of Gat No.540/1B/2 i.e. property of defendant no.1. Gat No.540/1B/2 is on the higher side to Gat No.535/2A. It is further contended that plaintiffs are collapsing the bandh in between Gat No.535/2A and Gat No.540/1B/2 and have made encroachment upto seven feet in Gat No.540/1B/2. It is further contended that there is common bore well and pipeline in Gat No.535/2A and defendant no.1 has right in it. Further, defendants have denied the existence of road from Gat No.540/1B/2. On the other hand they contended that plaintiffs are obstructing in enjoyment of their possession by making encroachment and by restraining them from using water from bore wel. Therefore, prayed for rejection of application of plaintiffs and prayed for relief of injunction against plaintiffs.

6. Heard learned advocate Shri. R.P.Pawar appearing for the plaintiffs and learned advocate Shri.P.N.Kadam appearing for the defendants. Perused all the documents produced on record by both the parties.

7. Following points arise for my determination and I have recorded my findings and reasons thereon as under: -

<u>POINTS</u>	<u>FINDINGS</u>
1)Whether prima-facie case lies in favour of plaintiffs or defendants?	In favour of plaintiffs.
2)Whether balance of convenience lies in favour of plaintiffs or	In favour of plaintiffs.

defendants?	
3)Whether irreparable loss would cause to plaintiffs if injunction is refused or to defendants if injunction is allowed?	Irreparable loss would cause to plaintiffs if injunction is refused.

REASONS

8. As to all points :-

Point Nos.1 to 3 are related to each other and prima-facie evidence in respect of all these three points is also common. Thus, I would like to decide all these three points by common discussion.

9. So far as regards the suit property mentioned in para 2 is concerned there is no dispute that plaintiff is owner and in possession of the same. It is also not in dispute that there is stony bandh between the property of plaintiff no.1 and defendants. Defendant has also not denied the fact about the existence of suit property mentioned in para 3. Their only contention is that suit property mentioned in para 3 is common property of plaintiffs and defendants. Therefore, only dispute regarding suit property in para 3 is to see whether it is in the absolute ownership of plaintiffs or it is common property of plaintiff and defendant. On 01/09/2014 plaintiff sent a legal notice to defendant no.1, office copy of the same is produced at exh.4/5. In this notice plaintiff specifically contended that defendant no.1 is trying to obstruct his possession by damaging the said bandh. It is further contended in the notice that defendant no.1 is trying to break the pipeline chamber and trying to stop the supply of water. Even after receipt of said notice defendant has not filed reply to the same. Defendant has neither denied the contention of the plaintiff

that he is trying to obstruct possession of the plaintiff by damaging the bandh nor stated that the pipeline is common between himself and plaintiffs.

10. Plaintiff has produced copy of complaint, which he had filed in Velapur police station against defendants.(exh.4/7) It is seen that plaintiff has filed complaint against defendants on 22/09/2014, wherein he made allegation that defendant no.1 has broken the pipeline of the ownership of plaintiff. It is further alleged that defendant no.1 and his family members are obstructing his possession by throwing stones of bandh in his field and damaging his sugarcane crops. Upon this complaint, police of Velapur police station had not taken any action. Therefore, plaintiff has filed present suit and in which prayed for interim relief against defendant no.1. These documents goes to show that since September 2014 there is dispute between plaintiff and defendant no.1. Plaintiff has made all efforts to stop defendant no.1 from obstructing him. On the other hand defendant no.1 after filing this suit first time denying all the allegations and contended before the court that the pipe line as alleged by the plaintiff is common between himself and plaintiffs. But he has not lead any positive evidence to prove this fact.

11. Defendant also denied that there is road from the bandh of Gat no.538/1 and that he is obstructing the plaintiff from using that road. But in the copy of sale deed, which he has produced, it is clearly mentioned that defendant no.1 has sold his right of way on the road going from the bandh of Gat no. 538/1. It means defendant is contradicting his own statements. He knowing that there is road, denying this fact. This conduct on the part of the defendant no.1 speaks itself and on the other hand corroborates the truthfulness of the plaintiff's case. Further, upon perusal of mutation entry no.2777 it appears that there is road from the bandh of Gat no.538/1.

12. Further from the recitals of the sale deed it is clearly seen that defendant no.1 has sold his right in the bore well to Vanita Jaysing Yevale. Therefore, his prayer that plaintiffs should not obstruct him from taking water from the bore well is infructuous. Secondly he prayed that plaintiffs should be restrained from obstructing his possession over Gat no. 540/1B/2. He contended that plaintiffs are trying to obstruct his possession and also made encroachment upto 7 feet in his property. But in order to remove encroachment defendant has not filed any suit against plaintiffs. No single notice is appears to have sent to plaintiffs. Further it is his contention that plaintiffs property is at 6 feet lower side to his property. Therefore, when his property is at 6 feet higher level to that of plaintiff's property, no question of obstruction at the hands of plaintiffs would arise. In support of his claim nothing has been brought on record. No single affidavit of independent witness is filed to support his claim.

13. From the above discussion I am of the opinion that plaintiffs have succeeded in proving that they have prima facie case in their favour. Denial of the case of the plaintiff on the part of defendants itself suggests obstruction. From his denial the fact of obstruction on his part can be gathered. On the other hand defendants have failed to prove that they have prima facie case. Defendants are adjoining owners of plaintiffs. Imminent danger is caused to the right and possession of the plaintiffs. Injury is certain. If injunction refused, defendant no.1 would obstruct to the plaintiff and ultimately irreparable loss would cause to the plaintiffs. On the other hand if the defendant's prayer for injunction is refused, no harm would be caused to defendants. Balance of convenience is also seen in the favour of plaintiffs. In the result, following order is passed.

ORDER

1. Application of plaintiffs for temporary injunction is allowed.
2. Application of defendants for temporary injunction is rejected.
3. Defendant no.1 is hereby temporarily restrained from causing obstruction by himself or through any other person on his behalf to the plaintiff's possession over the suit properties, in any manner, till decision of this suit.

Malshiras

13/07/2018

(J.M.Agnihotri)

4th Jt.CJJD, Malshiras.