

COMMON ORDER BELOW EXH.05 & 18 IN R.C.S.NO. 954 of 2013
(PASSED On 10th DAY OF NOVEMBER, 2014)

These are the applications filed by the plaintiff and defendant against each other vide Order 39 Rule 1 & 2 of the Code of Civil Procedure. Plaintiff sought to restrain defendant from making any encroachment over the lane adm.12fts 04' south-north, and 04ft in width east-west adjoining to the house property of the plaintiff i.e. 1/8th share area Adm.08.56 Sqr. Mtrs out of total area Adm.68.05 Sqr. Mtrs from City Survey No.784/2 as described in plaint para-1 (in short ***“disputed lane & Suit house***). Defendant sought to restrain plaintiff from disturbing his possession over his house property out of same survey number of which the disputed lane is a part. In short, facts necessary for the disposal of the present application are as following :

02] According to the plaintiff, she is owner and in possession of the suit house and the disputed lane. Defendant has no concern, right or title over suit house and disputed lane. The wall adjacent to the said lane facing south-north is also owned by the plaintiff. The defendant has started construction of his house adjacent to the suit house and he demolished the said wall adjacent to the lane and trying to made encroachment over the disputed lane. Plaintiff has made complaint with Municipal Council, Barshi. However, no action was taken. Defendant is threatening to make encroachment and not paying any heed to the request of plaintiff. Thus, plaintiff filed suit along with present application claiming that she has *prima-facie* case. According to her, if defendant permitted to disturb possession, plaintiff would suffer losses and there is possibility of multiplicity of the proceedings and she would suffer from irreparable losses. Thus sought to allow the application.

03] Defendants has filed written statement alongwith Counter-claim at Exh.16 and denied the suit claim in *toto*. According to defendant, suit is fabricated, false and not maintainable. According to him, the existence of said disputed lane is virtual and not in existence. According to him, plaintiff has no *prima-facie* case or balance of convenience. No irreparable losses would be cause to her. The hand sketch map attached by the plaintiff alongwith plaint is vague and not mentioned any measurements or area of the respective holders of the plots in survey number. It is specific case of defendant that disputed lane is not owned by the plaintiff and she would never got ownership on the basis of alleged sale deed of plaintiff. In fact plaintiff has made encroachment on the plot of defendant. Thus, suit is itself not maintainable in the present form. Defendant has purchased his plot from his relatives on 18/04/2013 of total area Adm.11.55 Sqr. Mtrs. After due measurements, he was put in possession. At the northern side and western sides of the house of the defendant, there is suit house and other house properties of the plaintiff. The defendant is only claiming ownership over his plot as mentioned in his sale deed. In fact the entire city survey No.784/2 is originally owned by the *predecessor-in-interests* of the defendant. Only to grab the land of the defendant, present suit has been filed. Defendant never obstructed possession of the plaintiff over suit plot. Thus defendant filed counter-claim and put specific case that the disputed lane though mentioned in the sale deed of the plaintiff the area or measurements of the said disputed lane is not included in the area purchased by the plaintiff. Thus, mere mentioning disputed lane does not give any title to the plaintiff and same is not binding upon the defendant. If the area under disputed land given to the plaintiff, it is defendant who would suffer irreparable loss. Therefore, defendant claims that plaintiff should not disturb his possession over area Adm. 11.55 Sqr. Mtrs. and should not make

any encroachment on his plot. Thus sought to reject the application and suit.

04] Plaintiff has filed written statement to the counter-claim at Exh. 23. She denied the counter-claim in toto. According to him the counter-claim is not maintainable in the present form. It is case of the plaintiff that she has only disputed lane to approach the suit house. Plaintiff has purchased suit house alongwith rights on the disputed lane. Plaintiff has also specifically pleaded that the defendant has got executed fabricated sale deed on of area Adm.11.55 Sqr. Mtrs including area of disputed lane, is itself is void and not binding upon the plaintiff. The existence of disputed lane, its use is very old and same is under use for more than 12 years. Thus, the defendant cannot claim any relief in respect of the disputed lane and accordingly, she sought to reject the counter-claim.

05] I have heard ld. Advocate Mr. N.N.Kazi for the plaintiff and ld. advocate Mr.D.S.Tikate for defendant. Perused pleadings and documents on record. Having considered the same following points arises for my consideration. I have recorded my findings thereon for the reasons stated thereunder :

SR.NO.	POINTS	FINDINGS
01]	Who amongst the plaintiff or defendant has made out <i>prima-facie</i> case?	Plaintiff.
02]	In whose favour balance of convenience lies ?	Plaintiff.
03]	Who suffers irreparable loss, if injunction rejected?	Plaintiff.
04]	What order?	AS PER FINAL ORDER

REASONS**AS TO POINT NO.01 TO 04 :**

06] Actual controversy revolves around the disputed lane and its title and possession. Plaintiff claims ownership over disputed lane on the basis of sale deed, a title deed. On the contrary, defendant claiming ownership over the disputed lane claiming that area of disputed lane is covered under his sale deed, again a title document. Thus, it is to be seen, as to in whose plot the disputed lane is situated and who is owner of the same so that its possession can be inferred.

07] Undisputedly city Survey No.784/2 has total area of 68.05 Sqr. Mtrs. Record shows that said city survey number was originally owned by *predecessor-in-interest* of the defendant. As such predecessor-in-interest of the defendant have sold out said survey number in different parts to plaintiff and to one Subhash Jagdale as shown in sketch map given in the counter-claim of defendant. Plaintiff has not disputed the area under sale deeds of the respective holders of City Survey No.784/2. Subhash Jagdale seems to have purchased 11.15 Sqr. Mtrs area under sale deed dated 23/02/1994. Said area situated at the west-south corner of the said survey number. Thereafter, said Subhash Jagdale had purchased an area Adm. 9.75 Sqr. Mtrs. on 24/6/1994 vide registered sale deed. Said area is situated at the west-north corner. Adjacent to it, at the eastern sides plaintiff has purchased an area of 14.31 Sqr. Mtrs vide sale deed dated 03/08/1998 and further purchased area Adm.13.58 Sqr. Mtrs on 03/08/1998. said area forms the central position of the said survey number facing south-north. Thereafter, on 21/09/2006, plaintiff has purchased the suit house adm. 8.56 Sqr. Mtrs. which is situated at the east-north corner of the said survey

number and defendant has purchased an area of 11.55 Sqr. Mtrs on 11/04/12013. The location and existence of the holders of the respective parties shows that house property of the plaintiff is situated at north and western side of the property of defendant.

08] The entries of the respective sale deeds of the said Subhash, plaintiff and defendant is recorded to the record of rights. The extract of the property record card is on record filed by the defendant as well as plaintiff. A perusal of said property card record shows the entries in respect of the holders and the area under their respective sale deeds. It is seen that plaintiff has purchased suit house and other house properties from the said survey number from Vithal Ramrao Zalte. If total area of each sale deed is calculated same is equal to the total area of city Survey No.784/2 i.e. 68.05 Sqr.Mtrs. which is as following. :

Total Area of City Survey No.784/2 = 68.05 sq. Mtrs.

01 Subhash Jagdale, sale deed dt.23/4/94	11.55
02 Subhash Jagdale, sale deed dt.26/01/92	09.75
03 Plaintiff , sale deed dt. 03/08/98	13.28
04 Plaintiff , sale deed dt. 03/08/98	14.31
05 Plaintiff, sale deed dt. 21/9/96	08.56
06 Defendant, sale deed dt. 18/4/13	11.55
Total : Sr.No.1 to 6	68.05.

09] It means total area of the land of survey number has been sold to the respective land holders. The dispute is in respect of suit house and house purchased by defendant. No doubt, plaintiff has purchased suit house on

21/09/2006 for an area Adm. 08.56 Sqr. Mtrs. A perusal of sale deed of the plaintiff filed on record, it is evident that the plaintiff has purchased only area of 08.56 Sqr. Mtrs. The sale deed further have recitals that except said area, disputed lane is also there to be used by the plaintiff which give rise to the present dispute. Plaintiff claims ownership on the basis of said recitals in the sale deed. On the contrary, defendant claims that the area of said disputed lane is also included in his sale deed.

10] As already observed, when the area of the respective sale deeds are calculated there exist no vacant area to show existence of separate area or disputed lane. Which shows that the area of the said disputed lane has been included in the sale deed of the defendant, that is the reason, why defendant is also claiming ownership over the disputed lane.

11] It is thus, required to see whether recitals as to the disputed lane in the sale deed of the plaintiff is binding upon the defendant. And its effect on title.

12] Defendant being purchaser of the plot from the said survey number and he being independently purchased his plot, the recitals in the sale deed of the plaintiff would certainly not binding upon him which would violates his rights on his own plot. However, said general principle is not applicable in the present case because the vendors of the plaintiff and defendants are common. Defendant has purchased properties from same vendors, i.e the *predecessors-in-interest* of the defendant. In these circumstances, the defendant should have knowledge of the sale deed and recitals of the disputed lane. In these circumstances, defendant should not have

included or should not have purchase area of disputed lane when same has already been sold to the plaintiff. No doubt, the recitals as to the disputed lane are vague and area of the lane is not included in actual area purchased by the plaintiff. However, recitals shows that the existence of said lane is old one and under use of the area purchased by the plaintiff.

13] Photographs filed by the plaintiffs on record shows that disputed lane was in existence since long and has a separate door attached to the said lane to approach the suit house purchased by the plaintiff. In these circumstances, *prima facie* area under disputed lane seems to be in possession of the plaintiff as per the recitals of the sale deeds. Prima facie she has purchased suit house along with use of the disputed lane. Thus, unless the rights of the parties and correctness of the sale deeds are decided by joining vendors as necessary party no actual findings can be given as to the ownership of the disputed lane. Mere inclusion of area of disputed lane in the sale deed would also does not give title to the defendant when already right to use of said lane was in existence since long and has been sold to plaintiff.

14] In these circumstance, the plaintiff has made out *prima-facie case* that disputed lane is under her use since long to approach the suit house. Thus, if defendant permitted to make construction or to disturb possession of the disputed lane would certainly cause losses to the plaintiff and plaintiff might suffer irreparable losses. Thus, plaintiff is entitled for temporary injunction, till disposal of the suit as prayed for. Hence, I answer points under consideration accordingly and pass following order.

ORDER

01. Application Exh.5 is allowed.
02. Defendants is hereby restrained by order of temporary injunction not to disturb the possession of plaintiff over the disputed lane and should not make any encroachment or construction over the disputed lane till disposal of the suit or any further order whichever is earlier.
03. Application Exh.18 is rejected.
04. Suit be expedite and shall depose of within Six Months. Parties to cooperative hearing.
05. Costs in cause of application.

Date : 10th Nove., 2014.

(**Sudhir N. Shinde**)
Jt.Civil Judge, Junior Division,
Barshi.

Sous. Vinita Sunil Zalte-Patil "" **Plaintiff.**
Vs.
Vaibhav D. Bhosale "" **Defendant.**

ISSUES

01. Who amongst plaintiff or defendant are in possession of the disputed lane having length south-north 12.02' and width 04fts east-west?
02. Does plaintiff prove that defendant obstructed her possession of the disputed lane and demolished wall adjacent to the disputed lane ?
03. Does defendant prove that plaintiff has obstructed his possession over plot adm. area 11.55 Sqr.Mtrs including area of disputed lane ?
04. Whether suit is bad for non-joinder of necessary parties ?
05. Whether suit is maintainable in the present form ?
06. Whether plaintiff is entitle for relief sought ?
07. Whether defendant is entitle for relief sought ?
08. What order and decree ?

Date : 10/11/2014.

(Sudhir N. Shinde)
Jt. Civil Judge, Junior Division,
Barshi.