



R.C.S.No.740/2024
Gorakh etc. / Rama etc.
CNRNOMHSO170020462024

ORDER BELOW EXH.05
(Date: 23/01/2025)

This is an application by the plaintiffs for grant of stay to the effect and operation of the decision of Mamlatdar, Madha in Road Case No. 28/2023, dated 29/07/2024 so also for restraining the defendants from obstructing their possession over the suit properties on the basis of the said decision.

02] In short, it is the contention of the plaintiffs that they are owners in possession of land in Gat Nos. 1038/2/A/1, 1038/2/D and 1038/2/E (in short, '**the suit properties**'), whereas, the defendants are owners in possession of land in Gat Nos. 1042/2, 1042/1/B, 1041, 1042/1/A, 1035/1/A, 1043/1, 1035/2/A, 1036/1/A, 1036/1/B, 1036/2 and 1035/1/B situated at village Tembhorni, Tq. Madha, Dist. Solapur

03] The lands of the defendants are situated towards the East, West and Southern side of the suit properties. To the North of the suit properties there is a Tembhorni - Kurduwadi Highway. The defendants have no concerned with the suit properties. However, they are illegally trying to create a way from the suit properties so as to have access to their fields from the Tembhorni - Kurduwadi Highway. On 01/01/2023, they have illegally tried to go through the suit properties, to which the plaintiffs resisted, but in vain. Hence, the plaintiffs have filed a suit for permanent injunction against themselves bearing No. 106/2023 on 09/02/2023. The said suit is pending for adjudication.

04] During pendency of the R.C.S.106/23, the defendants had approached the Mamlatdar, Madha under Section 5(2) of the Mamlatdar Court Act, 1906 for removal of impediments allegedly raised by the plaintiffs over the suit way in the suit properties. The Mamlatdar illegally allowed the application.

05] It is the contention of the plaintiffs that as per section 26 (b) of the Mamlatdar Court Act, the Mamlatdar had no jurisdiction to decide the application of the defendants under Section 5 (2) of the Act, as they had already preferred Regular Civil Suit bearing No. 106/2023 against the defendants for permanent injunction to protect their possession over the suit properties so also restrain themselves from creating way through the suit properties. However, despite of their resistance, the Mamlatdar did not consider the bar under Section 26(b) in proper perspective and decided the application in favour of the defendants on 29/07/2024.

06] On the basis of the order of the Mamlatdar, the defendants tried to forcibly create a way from the suit properties on 10/08/2024. Hence, the plaintiffs have instituted the instant suit and by way of this application is praying for an order of temporary injunction.

07] The defendants submitted say at Exh. 18 and resisted the application. They however did not dispute ownership of the plaintiffs over the suit properties. They also did not dispute that there is a Tembhurni - Kurduwadi Highway towards Northern side of the suit properties and their lands are situated towards the East, West and Southern side of the suit properties.

08] It is the contention of the defendants that the suit way which goes through the suit properties is in-existence and in use since time immemorial. They are using the said way to approach their fields since their ancestrars. The plaintiffs are however illegally trying to close the said way. In order to close the way, they have filed R.C.S. No. 106/2023 and after its institution, they blocked the way by putting Wooden log, hip of Soil and Stones etc. thereon. They tried to give understanding to the plaintiffs, but they did not listen. Rather, they threatened them of false implication in molestation cases. Therefore, they had approached the Mamlatdar under Section 5(2) of the Act for removal of impediment raised by the plaintiffs over the suit way in the suit properties and also for an injunction. The Mamlatdar had given opportunity of being heard to the plaintiffs, visited the spot in person, recorded memorandum of the spot, recorded evidence of both the parties and finally came to the conclusion that the suit way is in-existence since long and it has been blocked by the plaintiffs. Their application accordingly came to be allowed on 29/07/2024 and the plaintiffs are directed to remove the impediments in the way.

09] It is further submitted that the plaintiffs did not come before the Court with clean hands. They have filed R.C.S.No. 106/2023 with an ulterior motive to close the suit way. The proceeding before the Mamlatdar was not barred by Section 26(b) of the said Act as cause of action to the said proceeding and R.C.S.No. 106/2023 is different. It is submitted that the plaintiffs have blocked the suit way since March-2023. Since then, they are unable to approach their fields. Their fields have become locked since then. They have no other way to approach their fields. The

application is false. The Mamlatdar order dated 29/07/2024 is correct in all aspect. If the application is allowed, their fields become locked and they would be unable to cultivate it. Hence, they are praying for rejection of the application.

10] Heard Ld. Counsel Shri.P.H.Deshmukh for the plaintiffs and Shri.P.M.Sancheti for the defendants. Perused the record.

11] The following points arise from the record for my determination and I record my findings thereon with the reasons to follow thereunder.:-

Sr.No.	POINTS	FINDINGS
1.	Whether the plaintiffs prove that prima-facie case lies in their favour ..?	Yes.
2.	Whether the plaintiffs prove that the balance of convenience is in their favour ..?	No.
3.	Whether the plaintiffs prove that they would suffer irreparable loss, if the injunction is refused ..?	No.
4.	What order..?	Application is rejected.

REASONS

12] **Admitted facts :-** It is not in dispute that the plaintiffs are owner's of the suit properties and the defendants are owner's of land in Gat Nos. 1042/2, 1042/1/B, 1041, 1042/1/A, 1035/1/A, 1043/1, 1035/2/A, 1036/1/A, 1036/1/B, 1036/2 and 1035/1/B situated at village Tembhorni. It is also not in dispute

that there is a Tembhurni - Kurduwadi Highway towards Northern side of the suit properties and the lands of defendants are situated towards the East, West and Southern side of the suit properties.

13] **AS TO POINT NO. 1 :-** In order to get the equitable and discretionary relief of temporary injunction, proof of prima-facie case is a *sin-quo-non*. Prima facie case is generally considered in once favour, if he raises a triable issue in the case and court finds that it requires consideration on merit.

14] In the instant case, the plaintiffs are primarily challenging the legality of the order of the Mamlatdar dated 29/07/2024 in Road case No.28/2023 under section 5(2) of the Mamlatdar Courts Act on the count of bar under section 26(b) of the said Act. It is their contention that the jurisdiction of the Mamlatdar to try and decide the said case was barred by Section 26(b) of the Act, as they had already instituted a civil suit bearing No. 106/2023 for the matter covered in the said road case and it was sub judice on the day of filing of the said proceeding. In support of the said contention, the learned counsel for the plaintiffs have also relied upon the judgment of the Hon'ble Bombay High Court in the case of **Vishwanath Rambhaji Bhalerao Vs. Usha Pralhad Kasabe, 2011 (1) MHLJ 603**, wherein, it has been held that, *the jurisdiction of the Mamlatdar to decide an application under Section 5(2) would be barred, if a civil suit is filed prior to the institution of proceeding before Mamlatdar in respect of the matter covered in the proceeding before the Mamlatdar.*

15] The Mamlatdar Court's Act, 1906 is a special legislation. Section 5 of the Act, gives special powers to the Mamlatdar to remove or cause to be removed any impediment in the way etc. The powers under Section 5 are however subject to Section 6 and 26 of the Act. Section 6 and 26 are thus exception to Section 5. Section 6 is in respect of Collector's power to transfer suit and Section 26 is in respect of bar of suits. Section 26 clause (b) is relevant in the instant case. It reads as under-

26- bar of certain suits-

No suit shall lie under this Act,

(a).....

(b) in respect of any removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor-in-interest was a party, under this Act or in a Civil Court or under chapter XII of the Code of Criminal Procedure.

16] Section 26(b) thus creates a bar for entertaining a suit under the Mamlatdar Court's Act, if a civil suit is filed prior to the institution of the proceeding under the Mamlatdar Court Act in respect of the matter covered in the civil suit.

17] In the instant case, it is undisputed that the plaintiffs have filed R.C.S.No.106/23 for permanent injunction against the defendants to protect their possession over the suit properties so also to restrain themselves from creating a way from the suit properties. The said suit was filed on 09/02/2023. The recitals in the para No. 3 of the plaint in R.C.S.No. 106/2023 are important so as to ascertain as to whether the matter covered in that suit was brought again by the defendants in the subsequent proceeding in Road Case No. 28/2023 before the Mamlatdar. It reads as under-

3- प्रतिवादी हे दांडगाई करून वादीचे मालकी कब्जे वहीवाटीचे जमिनीतून कोठूनही पायी, वाहने, गु-हे जनावरे नेवून वादीचे मालकी कब्जे वहीवाटीस हरकत अडथळा होईल अशी कृत्य करू लागलेले आहेत. प्रतिवादीचा जमाव मोठा आहे. प्रतिवादी हे दावा जमीन मुळ गट क्र. १०३८ या गट नंबरचे पुर्व, पश्चिम व दक्षिण भागातील धारक आहेत. ते दावाजमीन मुळ गट नं.१०३८ चे उत्तरेकडील टेंभुर्णी-कुर्डूवाडी राज्य मार्गावर जाणे-येणेसाठी वादीचे दावा जमीनीमधून दांडगाई करून वाहने, जनावरे ने-आण करण्याचा उद्योग करू लागलेले आहेत.....

18] The aforesaid pleading in the plaint clearly recites that the said suit has been filed in respect of the alleged obstruction of the defendants over the disputed way. Now, it has to be seen whether the defendants had filed Road case No.28/2023 in respect of the matter covered in R.C.S.No.106/2023. The copy of the judgment of the Mamlatdar in the said road case is on record. Having gone through the same, it seems that the defendants herein had preferred the said proceeding in respect of removal of impediments allegedly raised by the plaintiffs over the suit way in the suit properties. Thus, the averments in the road case application are clearly showing that the said application was filed in respect of the matter covered in R.C.S.No. 106/2023. The road case was filed by the defendants on 18/05/2023 i.e. subsequent to the filing of R.C.S.No.106/23.

19] In view of the above, it is clear that the defendants herein had filed proceeding under Section 5(2) of the Mamlatdar Courts Act in respect of the matter covered in the earlier R.C.S.No. 106/2023. The plaintiffs have therefore raised a triable issue in the suit in respect of the legality of the order dated 29/07/2024 of the Mamlatdar. The plaintiffs have thus raised a serious disputed question in the suit and it requires consideration on merit. Hence, prima-facie case appears to be in favour of the plaintiffs. Therefore. Point No.1 is answered in affirmative.

20] AS TO POINT Nos.2 and 3 :- The second and third conditions to grant temporary injunction are that "the balance of convenience and irreparable injury" must be in favour of granting injunction. In the case of **Dalpat Kumar Vs. Prahlad Singh, AIR 1993 SC 276**, it has been held by the Hon'ble Apex court that the courts are not bound to grant temporary injunction merely on account of proof of prima facie case, but the satisfaction of the courts as to balance of convenience and irreparable injury are also *sin quo non* for exercise of the discretion. It is held in para 5 of the said judgment in respect thereof as under :-

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, *bona fide*, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused

and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

21] In view of the settled position of law, it has to be satisfied as to whether the plaintiffs are able to establish the points of balance of convenience and irreparable injury in their favor.

22] It is the contention of the plaintiffs that the suit way is not in existence, but the defendants are illegally and forcibly trying to create a new way from the suit properties. On the other hand, it is the contention of the defendants that the suit way is in existence since long, but the plaintiffs have illegally blocked the said way and since then their lands become locked.

23] Record goes to show that in the road case No. 28/2023, the Mamalatdar on prima-facie assessment of the evidence led by both the parties had come to the conclusion that the suit way is in existence since long and the plaintiffs have blocked it. The defendants have produced relevant record of the said Road Case. Having gone through the said record, it seems that the Mamalatdar had personally visited the suit way on 17.07.2023 and recorded Memorandum Panchanama of the spot in the presence of the parties. The said pachanama clearly recites that at that relevant time, the Mamalatdar had found that the suit way is in existence, it is the only approach way available to the

fields of the defendants, but it has been blocked by the plaintiffs in their Gat No. 1038. The relevant portion of the said panchanama is as under

..... ‘ कुर्डुवाडी-टेभुणी राज्य मागापासुन दक्षीण पुर्वेस जाणारा रस्ता कच्चा स्वरुपाचा असल्याचे दिसुन येते. पश्चिम दिशेपासुन पुर्वेकडे वजनकाट्याच्या पाठीमागुन गट नंबर १०३८ व पोट हिश्यामधुन रस्ता असल्याचे दिसुन येते. सदर रस्ता पुर्वेकडे जाताना लाकडे, दगडगोटे यांच्या सहयाने अडथळा केल्याचे आम्हा पंचाना दिसुन आले. तसेच जमीन गट क्रमांक १०३८/२/अ/१ मध्ये तारेचे कंपाउड रस्तयाच्या मधोमध पुर्व-पश्चिम उभे असल्याने दिसुन आले. ‘

24] In view of the above, the recitals in the spot panchanama dated 17.07.2023 clearly refute the contention of the plaintiffs that the suit way is not in existence and they did not block it. Rather the said panchanama clearly supports to the case of the defendants about existence of suit way since long and obstruction thereon at the instance of the plaintiffs.

25] The record of the Road Case No. 28/2023 further recites that the Mamalatdar had recorded evidence of both the parties in the said case so as to ascertain existence of the suit way. The evidence of the plaintiff No.1 Gorakh herein is important here. The cross-examination of the plaintiff No.1 Gorakh discloses that in the cross-examination he has specifically admitted existence of the suit way since long and obstruction thereto at his instance. The relevant portion of his cross-examination in this regard is as under :-

----- ‘ यातील वादी यांच्या जमीनी माझे जमीनीच्या दक्षीण बाजुला आहेत. यातील वादी यांच्या जमीनीत त्यांच्या वस्त्या आहेत. माझी जमीन ही टेभुणी - कुर्डुवाडी रस्त्याच्या उत्तरेस आहे. ----- वादी यांना त्यांच्या जमीनीत जाण्या-येण्या साठी पर्यायी कोणते मार्ग आहेत हे कोर्टातील दाव्यात नमुद केलेले नाही.

यातील वादी हे त्यांच्या त्यांच्या शेतात वेणेगाव-टेभुर्णी या शिवेच्या रस्त्याने जातात. मी वादग्रस्त रस्त्यावर मोठमोठे दगडे, लाकडाचे ओढके, मुरुमाचे ढिगारे रस्त्यावर टाकले हे खरे आहे. ----- रस्त्याच्या संदर्भात माझे व वादी यांच्यात वाद आहे हे खरे आहे. ----- वादग्रस्त रस्त्याबाबत तहसिलदार यांनी पाहणी करून पंचनामा केलेला आहे हे खरे आहे. यातील वादी यांना त्यांच्या जमीनीत जाणे-येणे करीता, मेहनत मशागत करण्याकरिता, बैल-बारदाना आणण्याकरिता रस्ता वाहतुक बंद आहे हे खरे आहे. मंडळअधिकारी हे रस्ता खुले करण्याकरिता आले असता मी हरकत घेतली हे खरे आहे.

26] In view of the clear admissions of the plaintiff No.1, it is clear that the suit way was in existence and in use since long. Defendants were using the said way so as to approach their fields, but the plaintiffs have blocked the way and therefore the lands of the defendants became locked. It also appears from the record that the defendants have no any other alternative suitable way to approach their fields.

27] The existence of the suit way since long also gains support from the copies of the Sale-deeds bearing No. 1687/2010, 5191/2015, 3960/2008, 451/2021, 6716/2010 produced on record by the defendants. Out of the said Sale-deeds, Sale-deed No. 1687/2010 and 3960/2008 pertain to the suit properties in Gat No. 1038. The other sale-deeds pertain to adjacent lands of the suit properties. In all the said sale-deeds, the suit way has been clearly mentioned in the four boundaries of the respective lands. One of the sale-deed bearing No. 3960/2008 was executed by the brother of the plaintiff in the Gat No. 1038, wherein also he has mentioned about the existence of the suit way in the four boundaries of the suit properties.

28] The aforesaid sale-deeds thus further reaffirms the fact of the existence of suit way since long and obstruction thereto at the instance of the plaintiffs. As such, the evidence available on record at this juncture is clearly supporting the case of the defendants then the plaintiffs. Right now, the suit way has been blocked by the plaintiffs. There does not appear any alternative approach way to the defendants so as to have access their fields. In such a case, if the application is allowed comparative mischief and inconvenience would be caused to the defendants then the plaintiffs. If the application is allowed, the lands of the defendants would be locked and they would be deprived from cultivating it. Therefore, in such a case, it is certainly the defendants who would suffer irreparable injury then the plaintiffs. Therefore, the point of balance of convenience and irreparable loss are not in favour of the plaintiffs, but in favour of the defendants. Hence points Nos. 2 & 3 are answered in negative.

29] **AS TO POINT NO.4 :-** In view of the finding of aforesaid points, though the plaintiffs have established that prima-facie case lies in their favour, but they failed to establish the point of balance of convenience and irreparable loss in their favour. Therefore, they are not entitled to the relief of temporary injunction. Hence, order.

ORDER

01. Application is rejected.
02. Costs in the main cause.

(Y.S.Akhare)

Date :- 23/01/2025

Jt. Civil Judge Junior Division,
Madha.