

R. C. S. No. 236/2016

Shri. Ankush Shankar Thorat

---- **Plaintiff****Vs.**

Dpt. Engineer, PWD, Satara. & Ors.

---- **Defendants****Order Below Exh. 5**

1. The plaintiff has filed this application under Order 39 Rule 1 and 2 of Civil Procedure Code for temporarily restraining the defendants from widening the road through his land.

2. Defendant Nos. 1 and 2 have not filed say. Defendant No. 3 has filed say at Exh. 20 and has taken strong objection.

3. Heard both sides at the length. It is contention of the plaintiff in application as well as in the arguments that defendants are widening the road to 10 Mtrs. in place of 8 to 10 ft width. Defendant are creating such road without acquiring the land. Therefore, they be restrained from creating road of more width. It is argument and contention of defendant that defendants are not constructing road in the land of plaintiff. They are renewing the road as per previous sanction of 10 Mtrs width. Hence application be rejected.

4. From the contentions in the applications, say and the arguments following points arise for determination along with their findings.

Sr. No.	POINTS	ANSWERS
1	Does plaintiff prove prima facie case in his favour?	No

2	Is the balance of convenience in favour of plaintiff?	No
3	Does plaintiff prove that he will suffer irreparable loss if temporary injunction is not granted in his favour ?	No
4	What Order ?	As per final order application is rejected

REASONS

As to Points No. 1 to 3 :-

5. These points are interconnected with each other, so, I discuss them together.

6. In support of the contentions the plaintiff and defendant No. 3 have filed documents. According to plaintiff the existing road is of 7 to 8 ft. width towards northern side of his land block No. 134/1. According to him that is a cart road. Now, defendants are trying to wide this road to 33 ft width.

7- It is for the plaintiff to show prima-facie case in his favour. The plaintiff has not filed any document or any other evidence to show that the existing road is about 7 to 8 ft wide and is cart way. Defendant No. 3 had got Court Commissioner appointed to bring the situation of road before the Court. Accordingly, Dpt. Superintendent of Land Records has conducted the commission and submitted his report and map. In the commission order it was directed to court commissioner to measure the width of the road but in the map given by him there is no

mention of measurement of the existing road. Therefore, this report cannot be considered and it is not useful to decide this application. The commission is not done as per order.

8- The defendant has produced with list Exh. 26 the letter given by Dpt. Engineer, Construction Department Zilha Parishad, Satara. That letter is dt. 01/02/2016 bearing no. बांध/तांत्रिक/रेशा-१/११९/२०१६. That letter given to Dpt. Sarpanch of village Bhuyachiwadi, Tal. Karad. It is mentioned therein that the disputed road is rural road No. 43 and it is 10 Mtrs wide. Advocate for the plaintiff argued that on which basis the Dpt. Engineer has stated that road is 10 Mtrs. wide. This letter is given by a responsible officer of Satara Zilha Parishad. On which documents this letter was issued by Dpt. Engineer can be seen at the time of deciding this suit on the basis of evidence. At this stage this letter has to be accepted as prima-facie case. Advocate for the plaintiff relied on the map produced by the defendant with list Exh. 26. He submitted that the road shown in the map is wide at some places and towards western end it has become narrow. Without any evidence we cannot interpret the width of road on the basis of this map. The plaintiff has not produced any document to show that the existing road is about 7 to 8 ft. wide. Previously the plaintiff had filed RCS No. 344/2006 in respect of same road and against the same defendants except defendant No. 1. That suit was dismissed in default. The plaintiff has no prima-facie evidence to show the prima-facie case in his favour. Therefore, the balance of convenience does not lie in his favour. If the temporary injunction is not granted then the plaintiff will not suffer any loss. On the contrary, the

Order below Exh. 5

:: 4 ::

R. C. S. No. 236/2016

construction of the road is going on for the villagers. Hence, I answer these points in **negative**.

As to point No. 4 :-

9. From the discussion of point No. 1 to 3 it is seen that the plaintiff failed to prove his contention and claim. Hence, application is liable for rejection. In the result I pass following order.

ORDER

1. Application Exh. 5 stands rejected.
2. Costs in main cause.
(pronounced in open Court)

Sd./- XXX

Dt. 01/09/2017
Karad.

(P. A. Savadikar)
Civil Judge Sr. Dn. Karad.

Sd./- XXX

Ganesh D. Jadhav,
Stenographer (L.G.)