

ORDER BELOW EXH. 5 IN R.C.S. No. 141/12

1. This is an application filed by plaintiff praying for temporary injunction against defendants.
2. Perused application and say. Also perused the documents on record. Heard advocate Shri. H.D. Patil for plaintiffs and advocate Shri. M.S. Nangare, for defendants.
3. The following points arise for my consideration and my findings thereon as under :-

Sr. No.	Points	Findings
1	Whether plaintiffs prove prima-facie case in their favour?	In the affirmative
2	Whether plaintiffs prove balance of convenience in their favour?	In the affirmative
3	Whether plaintiffs prove that irreparable loss will be caused if application is rejected?	In the affirmative
4	What order?	Application is allowed

REASONS

4. Parties have filed bulk of documents out of which relevant document are discussed herein-after.

5. **As to point nos. 1 to 3 :-**

Advocate for plaintiffs argued that defendants have no concern with suit property mentioned in plaint para 1/A & 1/B. They are causing obstruction to the plaintiffs possession over these properties. The road of 10 feet in width (located in block no.1099) was agreed to be kept in suit property as mentioned in plaint para 1/C. The remaining property, in this block number is allotted to defendant no. 2. The said road is on the western side. Defendant no. 2 is causing obstruction for the use of said road. On the contrary, advocate for defendants argued that the disputed road in block number 1099 is at the eastern side. The plaintiffs have filed this suit in order to create new road for ingress and egress to the property in block number 1090.

6. The perusal of the record makes it clear that the suit properties mentioned in plaint para 1A & 1B are belonging to the plaintiffs. The perusal of document produced with Exh. 3/10 i.e. partition deed on the stamp paper, Exh.17 i.e. order of Tahasildar, Patan and Exh.18 i.e. copy of Pherphar number 1374 makes it clear that block number 1090 is allotted to the father's of plaintiff, block number 1098 is allotted to the plaintiff no. 2 and block number 1099 is allotted to defendant no. 2. The said documents make it also clear that the block number 1097 is allotted to defendant no. 1. It is also mentioned in these documents that road having width of 10 feet is to be kept in block number 1099 for members of Kadam family. In all these documents, it is not clear as to from which side of block number 1099, the said road is proceeded. Plaintiffs claiming the said road to be at the western side. On the contrary, the

defendants are claiming that the said road is proceeded from eastern side. There is no document to show the exact location of road. In this respect, the defendants have filed on record the affidavits Vishwas Vilas Kadam, Nivas Vilas Kadam and Vikas Vilas Kadam. These deponents are signatories to the partition deed and they have been allotted the specific shares in partition. They deposed that the road proceeded through block no. 1099 is from eastern side.

7. From all above, it is clear that defendants have no concern with suit property in plaint para 1A & 1B. Therefore, they are not authorized to make any obstruction. Further, it is also clear that there is road in block number 1099 and the defendants are also not authorized to obstruct this road. If the said road is obstructed, it appears from the map on record that the land holders in block number 1092 will not be able to enjoy that property. Considering all this, the prima facie case and balance of convenience lies in favour of plaintiffs. Further, it also appears that the irreparable loss will be caused to the plaintiffs if this application is not allowed. Considering all above, point nos.1 to 3 are recorded in affirmative :-

8. Considering all the facts and circumstances, following order is passed.

ORDER

1. Application is allowed as below.
2. Defendants are hereby restrained from causing obstruction to the plaintiffs possession over lands

Order below exh. 5 in R.C.S. No. 141/12

in block no. 1098 and 1090 as mentioned in plaint
para no. 1A & 1B till decision of this suit or any
other order if passed sooner.

3. defendant no. 2 is hereby directed to allow
plaintiffs to proceed through the road having 10
feet in width located at the eastern side of block
number 1099 till decision of this suit or any other
order if passed sooner.

4. Costs in cause.

Place : Patan

(Shashikant R. Mokashi)

Date : 20.10.2012

Jt. Civil Judge, J.D., Patan.