

**IN THE COURT OF CIVIL JUDGE,SR.DN. VADUJ**  
**(Presided over by R. V. Wanwadi )**

**Regular Civil Suit No. 15/2018**

**Gangubai Ghadge - plaintiff**

**V/s**

**The Collectors, Satara & Ors - defendants**

**ORDER BELOW EXH.5.**

( Passed on this 21th day of March, 2018 )

1. This is an application moved on behalf of the plaintiffs for granting temporary injunction against the defendant No.2 thereby restraining him from executing the order passed by him in rasta case No.SR /9/2017 dated 06.07.2017 till the final decision of the suit.
2. Perused the application and say filed on it. Heard learned advocate for the plaintiffs and defendant No.2. After going through the rival pleading of the parties, following points arise for my determination and I have recorded my findings against the same for the reasons to follow.

<b><i>Sr.No.</i></b>	<b><i>POINTS</i></b>	<b><u>FINDINGS</u></b>
1.	Whether the plaintiffs have made out prima-facie case in their favour ?	No.
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	No.

<b>Sr.No.</b>	<b>POINTS</b>	<b><u>FINDINGS</u></b>
3.	Whether the plaintiffs will suffer the irreparable loss if injunction is not granted in their favour ?	No.
4.	What order ?	As per final order.

### **REASONS**

#### **AS TO POINTS NO.1 TO 3 :-**

(As all these points are inter related, they are discussed simultaneously.)

3. The learned advocate for the plaintiffs has argued that the defendant No.2 has passed the order in rasta case No. SR/9/2017 without following due procedure of law. He has drawn the attention of the Court towards Sec.26 of Mamlatdar Court Act and argued that when the earlier suit was pending, there was bar to proceed with the rasta case No.SR/9/2017. He has drawn the attention of the Court towards the various documents filed on record and certified copy of the plaint in RCS No.129/2017. He argued that defendant No.2 illegally trying to execute the said order under the political pressure. Hence, defendant No.2 be restrained from executing the said order till the final decision of the suit.

4. On the contrary, the learned A.G.P for defendant No.2 has argued that defendant No.2 has given the decision in rasta case No.SR/9/2017 by following the due procedure of law. He further argued that plaintiffs have not purposely stated the four boundaries of the suit land in the plaint. He argued that plaintiffs have already

filed the revision application with the SDO, Dahiwadi against the order passed by defendant No.2 in rasta case No.SR/9/2017. He argued that as plaintiffs have already availed the efficacious remedy, injunction can not be granted as per sec. 41(h) of Specific relief Act. He argued that at the same time plaintiffs can not avail remedies before two different forums. Hence,application be rejected.

5. Perused the record and proceeding. It is the contention of the plaintiffs that defendant No.2 has passed the illegal order without following the due procedure of law and without taking into consideration the actual facts on the spot. It is the contention of the plaintiffs that there was no public way passing from Survey No.82 new land block No.371 and no rights of way were in existence to the defendants. There was a public way passing from Survey No.111, 112 and the said road was in use. The defendants have forcefully blocked the said way and filed the false rasta case against the plaintiffs and obtained illegal decision in it.

6. Admittedly defendant No.3 to 28 have filed rasta case No. SR/9/2017. In the said decision plaintiffs were directed to clear the way passing from the west side of block No.371 and the road which passes east-west from block No.371, 469 & 470. Admittedly plaintiffs have preferred their revision against the said decision before SDO, Dahiwadi. Admittedly the said revision is pending before the SDO, Dahiwadi till the argument made before this court.

7. It is the contention of the plaintiffs that defendant No.2 has given the illegal decision. The learned advocate for the plaintiffs

has drawn the attention of the Court towards the village map. After perusing the said village map it reveals that from the west side of Survey No.82 there was canal. The same position is found in the map of block No.371. It is pertinent to note that the plaintiffs have not filed the copy of the sale deed on record in order to show the boundary marks of the suit land block No.371. Even plaintiffs have not stated the four boundaries of block No.371 in the plaint. Thus, the four boundaries of block No.371 are not specifically brought on record on behalf of the plaintiffs. Thus, the plaintiffs have suppressed the material fact before the Court regarding the four boundaries of block No.371. After perusing the the decision given by defendant No.2 in rasta case No.SR/9/2017 it reveals that the defendant No.2 has inspected the spot and found that there was a road towards the west side of block No.371 and the road passes east-west from block No.371, 469 & 470. After perusing the said decision it reveals that the defendant No.2 has observed in the said decision that in the sale deed of the plaintiffs towards the south boundary mark is mentioned as a road. In order to rebut the said fact plaintiffs have not filed the copy of the sale deed on record.

08. It is the contention of the plaintiffs that under the garb of rasta case No.SR/9/2017 defendants are trying to create new way from the suit land. However, apart from the bare words of the plaintiffs there is nothing on record to show that defendant No. 2 along with other defendants are trying to create new way from the suit land under the garb of order passed in rasta case No.SR/9/2017. On the contrary, plaintiffs themselves have filed on record the copy of notice issued to them by Grampanchayat Kalambi directing themn

to remove the encroachment made by them on the road. This fact also prima facie supports the decision of defendant No.2 passed in rasta case No.SR/9/2017.

09. The much argument is made on behalf of plaintiffs on the point of map filed along with the plaint. However, the said fact is yet to be proved. The plaintiffs have also argued on the point of Sec.26 (2) of Mamlatdar Courts Act. However, it is pertinent to note that the plaintiffs have already availed the efficacious remedy and filed revision before the SDO and the said revision is pending. It is pertinent to note that the decision in rasta case No.SR/9/2017 was given on 05.07.2017. The plaintiffs have filed revision against the said order on 29.07.2017. It is pertinent to note that the present suit is filed on 03.01.2018. In between the said period of almost more than four months, it was open to the plaintiffs to raise all these contentions before the SDO. However, it seems that inspite of that plaintiffs simultaneously are trying to avail both the remedies at a time one before the SDO and another before this Court which is not feasible. When the parties have already availed the efficacious remedy in earlier proceeding, it is always better on the part of other authority to keep away himself from passing any order as there is possibility of expressing two conflicting views against the same order which is in dispute. As the plaintiffs have already availed the efficacious remedy available to them, they are not entitled to temporary injunction in view of sec. 41(h) of Specific Relief Act.

10. Plaintiffs failed to made out prima facie case in their favour. Documentary evidence shows that balance of convenience

does not lie in favour of the plaintiffs and plaintiffs will not suffer any irreparable loss even if injunction is not granted in their favour. On the contrary, if the injunction is granted it will cause hardship to the number of villagers. Hence, I answer point No. 1 to 3 in the negative.

**AS TO POINT NO. 4.**

11. As the plaintiffs failed to made out the factors like prima face case, balance of convenience and irreparable loss, their application deserves to be rejected. Hence, I pass the following order.

**O R D E R**

1. The application at Exh. 5 is rejected.
2. Cost in casue.

**Vaduj.**

**Date :21.03.2018**

**(R. V. Wanwadi )**

**Civil Judge,Sr.Dn.,Vaduj.**