

**IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, VADUJ**

**Regular Civil Suit No. 986/2019**

**CNR No.MHST180005322019**

**Raju Abbas Shaikh**

**Vs**

**Collector, Satara and Ors.**

**COMMON ORDER BELOW APPLICATION AT EXH. 5 AND 26**

(Passed on this day of **16<sup>th</sup> December, 2020**)

Application at Exh.5 has been filed by the plaintiff under Order XXXIX rule 1 of the Civil Procedure Code seeking relief of temporary injunction restraining defendant Nos.3 to 7 from creating road from the suit land i.e. Gat No.1. Similarly, on 14/07/2020 the plaintiff has filed application seeking direction to defendants to maintain status-quo with respect to the suit land.

2. Defendants filed their say to the application at Exh. 5 and application at Exh. 26 respectively at Exh. 19 and 31.

3. Learned advocate for the plaintiff filed written argument at Exh.32 and learned advocate for the defendants filed written argument at Exh.48. Perused documents placed on record.

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4. It is the contention of the plaintiff that defendant Nos. 2 and 3 at the instance of defendant Nos.4 to 7 passed illegal order as per Section 5 of the Mamledar's Court Act. In fact the plaintiff was ready to give access from the bandh in between Gat No.1 and 110. Though there was no road in existence, on 28/08/2019 notice has been issued to the plaintiff to remove obstruction. Thus, defendants are on the basis of illegal order trying to create new road from Gat No.1 i.e. the suit lands. On these grounds the plaintiff has prayed to allow this application.

5. On the other hand, according to defendants the plaintiff had obstructed the road. So, application was filed before the Mamledar. By his order he has allowed the application and directed the plaintiff to remove obstruction. It is also contention of defendants that already obstruction has been removed. So, this application is not maintainable.

6. Following points arise for determination and I record my findings thereon for the reasons stated hereinafter;

<b>Sr.No</b>	<b>Points</b>	<b>Findings</b>
1]	Does plaintiff prove that he has <b>prima-facie</b> case ?	No.
2]	In whose favour <b>balance of convenience</b> lies ?	In favour of defendants.

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<b>Sr.No</b>	<b>Points</b>	<b>Findings</b>
3]	Does plaintiff prove that he will suffer <b>irreparable loss</b> if temporary injunction is not granted ?	No.
4]	What order ?	As per final order.

### **R E A S O N S**

#### **AS TO POINT NOS. 1 TO 4 :-**

7. It is pertinent to note that present suit has been filed by the plaintiff for declaration that order dated 05/07/2019 of Mamledar is not binding upon him and also for perpetual injunction restraining defendant Nos. 3 to 7 from creating the road from the suit land i.e. Gat No.1. Present suit has been filed on 29/08/2019. Along with the suit the plaintiff had filed application at Exh. 5 on the same date. Record and proceedings further show that the plaintiff on 11/11/2019 has filed application at Exh. 21 for amendment of the plaint. On going through the said application it is seen that the plaintiff himself in his application at Exh. 21 pleaded that on 30/08/2019 i.e. on the very next date of the filing of the present suit defendant Nos. 3 to 7 have created road. Accordingly, the plaintiff is intending to amend the plaint seeking mandatory injunction directing defendant Nos.3 to 7 to repair the land from which road has been created and also for compensation of Rs.50,000/-. Thus, it is seen that already road has been created. In such circumstances, no temporary injunction can be granted restraining defendants from creating road. This application

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has become infructuous.

8. As already road has been created and accordingly plaintiff has sought amendment by filing application at Exh. 21, the plaintiff cannot claim temporary injunction to restrain the act of defendants which has been already done by them. Hence, the plaintiff has no prima facie case. So, I answer point No.1 to 3 in the negative and in answer to point No.4, I pass following order.

**ORDER**

1. Applications at Exh. 5 and 26 are rejected.
2. Costs in cause.

Place : Vaduj

Date : 16.12.2020

(K. C. Mane)  
Civil Judge, Senior Division,  
Vaduj

(K. A. Jagtap) Stenographer