

R.C.S. 25/2024**Shobha Vs. State of Maharashtra****ORDER BELOW EXH.05**

Plaintiffs moved Application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure for temporary injunction against defendant Nos.4 to 34. Defendants filed their Say vide Exh.48.

2] Plaintiffs have filed suit for declaration and permanent injunction. According to plaintiffs, defendant No.2 SDO and defendant No.3 Tahasildar have passed order dated 25/07/2023 and 12/08/2022 respectively which are not only illegal but also without following due procedure of law. It is on the basis of these orders defendant Nos. 4 to 33 went to the extent of obtaining police aid for the purpose of execution of order by filing letter dated 25/11/2023 to the police station. It is in view of this letter, plaintiffs were called and their statements were recorded. This is how plaintiff Nos.1 and 2 came to know that defendant Nos. 2 and 3 have passed orders regarding the approach way from their Gat No. 369/A without impleading them as necessary party to the proceeding.

3] Plaintiff further contended that, plaintiff Nos. 1 and 2 are under apprehension that defendant Nos.4 to 33 may take undue advantage of the alleged orders passed by defendant Nos.2 and 3 and unauthorizely may create approach way from Gat No.369/A. However, plaintiff Nos. 3 to 28 and defendant Nos.34 to 36 were non applicants in the proceeding before defendant No.3. Hence, plaintiffs have filed this application for restraining defendant Nos.4 to 34 from creating approach way illegally and unauthorizedly without following due procedure of law.

4] Defendant Nos. 4, 5, 7 to 20, 24 to 28, 32 & 34 opposed the

application and supported the order passed by defendant Nos.2 and 3. According to these defendants, approach way exists through Gat No.369. Defendants have filed an application under section 5 of the Mamlatdar Court Act, for removal of obstruction. Defendant No.3 has passed order on the basis of panchnama, which discloses the approach way and the obstruction created by plaintiffs. Plaintiffs have challenged the order passed by defendant No.3 before the court of defendant No.2. Defendant No.2 upheld the orders passed by defendant No.3. Plaintiffs have filed this suit in the form of challenge to the orders passed by defendant Nos. 2 and 3.

5] Defendants further contended that, the approach way exists through field of plaintiffs and it is necessary for the defendants to use approach way for the purpose of conveniently approaching to their agricultural fields. Defendants owned Gat Nos.360, 364, 371, 378, 380, 473, 474, 524, 526, 581 & 582. For the purpose of approaching the aforementioned gat numbers the approach way exists through gat Nos. 368 and 369. Actually, the approach way starts from Gat Nos.348 to 350, 365 to 369, 370, 379, 381 to 384, 386 to 390 and the said road further extended to Gat No.368, 369/1, 369/3. The said approach way had been in use since long continuously and without any obstruction. Defendants would be put to loss if the balance of convenience tilts in favour of plaintiffs. Hence, prayed for rejecting the application.

6] Heard Mr.C.B.Pandit, the learned advocate for plaintiffs. Heard Mr.V.H.Karande, the learned advocate for defendant Nos.4,5,7 to 20,24 to 28, 32 & 34.

7] After hearing and on the basis of pleading, the points that arise for my determination are as follows and I have recorded my findings against each of them for the reasons discussed below:-

Sr.No.	<u>Points</u>	<u>Findings</u>
1]	Whether there is prima facie case?	... Yes.
2]	Whether balance of convenience lies in favour of plaintiffs?	... Yes.
3]	Whether plaintiffs shall suffer irreparable loss ?	... Yes.
4]	What order ?	... Application (Exh.05) is allowed.

REASONS

8] Before deciding the application it is relevant here to mention that the present matter has been made time bound by the order dated 16/08/2024 passed by Hon'ble High Court in Civil Revision Application (ST) No.22711/24 (Ramchandra vs. Shobha). The application vide Exh.05 is directed to be decided within a period of six weeks from the date of passing of order. The time limit shall expire on 27/09/2024. Thus, application is taken up for order below Exh.05 within time limit.

As to Point No.1 :-

9] It reveals from order dated 12/08/2022 passed by defendant No.3 that plaintiff Nos. 1 and 2 were not the party to the proceedings (document No.27 of the list vide Exh.03). It also reveals from the order dated 25/07/2023 passed by defendant No.2 that the plaintiff Nos.1 and 2 were not the party to the proceeding (document No.28 of the list vide Exh.03). It is material to note that it is on the basis of spot inspection dated 05/07/2022 it is held that approach way exists through Gat Nos.368 and 369 and further it is opined that Gat Nos.369 appears to be cultivated by plaintiff Nos.3 and 4. As such, there is reference of Gat No.369 but the existence of Gat No.369/1 and 369/2 no where disclosed.

10] It is obvious to note that the said gat No.369/1 which is owned by plaintiff Nos.1 and 2 appears to have reflected in the letter (document No.30 of the list vide Exh.03) written to the police station for police aid. The afore-mentioned aspect shows that neither the plaintiff Nos.1 and 2 nor the gat numbers owned by them are the party / properties to the revenue proceeding.

11] During the course of argument, learned advocate for defendants vehemently argued that there may be a prima facie case in favour plaintiffs. But the irreparable loss and balance of convenience are the material aspects. Unless those are proved by plaintiffs they are not entitled to the relief.

12] Considering the proceeding before the defendant Nos.2 and 3 wherein plaintiff Nos.1 and 2 and property owned by them does not reflect therein is the sufficient factor to establish prima facie case in favour of plaintiffs. The learned advocate for defendants is fair enough to argue that the prima facie case may exists in favour of plaintiffs but other factors also needs consideration. Learned advocate for defendants relied upon following citations :

i) Prallhad Jagannath Jawale and Ors. vs. Sou. Sitabai Chander Nikam and Ors. Reported in 2011 (7) All M.R. 255. It is held that “grant of temporary injunction – court cannot exercise power of granting temporary injunction mechanically unless existence of three ingredients namely prima facie case, irreparable loss and balance of convenience is established”.

ii) Shri. Vidyadhar Sitaram Mokal and Ors. vs. Mr. Barkatullh Allhasan Shaikh and Ors. Reported in 2014 (1) All MR 121. It is held that “order of injunction – prima facie case is not the only consideration while granting order of injunction- court is also

required to consider balance of convenience and irreparable injury”.

13] The ratio laid down in Prallhad's case and Vidyadhar's case is directory in nature and it requires consideration as per the facts and circumstance of each case. In the present matter, as already discussed in paragraph Nos. 7 and 9 it is concluded that plaintiffs have prima facie case in terms of non joinder in the revenue proceedings and as also regarding the legal procedure to be followed by defendant Nos.2 and 3. For all the aforementioned reasons, I have answered Point No. 1 in affirmative and recorded my finding accordingly.

As to Point No. 2 :-

14] Plaintiffs have come up with the case that it is on the basis of application filed by defendants for police protection (document No.13 of the list vide Exh.03) defendant Nos.2 and 4 were called at Khandala Police Station for the purpose of recording statements. It is on the particular occasion it reveals to the plaintiff Nos.1 and 2 that their Gat No.369/1 and 369/3 are about to put to task in view of the order passed by defendant Nos.2 and 3. It is the principle of natural justice that parties should be heard before passing any order against them.

15] It reveals from the order passed by defendant No.2 and 3 that plaintiff Nos.1 and 2 were neither party to the proceeding nor the opportunity to justify their property given to them. According to defendants the approach way further extended from Gat No.369. On the other hand, according to plaintiffs the approach way ceased to exist at the boundary of Gat No.369. Both the learned advocates relied upon spot inspection report but they differ in their interpretation. This aspect required to be proved by

evidence as per the respective pleadings of the parties.

16] Learned advocate for defendants relied upon following citations :

i) **Vishwanath S/o Rambhaji Bhalerao and Anr. vs. Usha W/o Pralhad Kasabe reported in 2010 (5) All M.R.77.** It is held that “Orders passed under Mamalatdar’s Court Act- challenge to – authorities recorded concurrent findings of facts which may be treated as findings recorded on prima facie assessment of evidence. Hence, orders passed by authorities, on appreciation of material available on record, cannot be interfered with”.

ii) **Sushilkumar Chandrakant Kadam and Ors. Vs. The Sub Divisional Officer and Ors. Reported in 2023(4) ALL M.R. 81.** It is held that “Tahasidar directed petitioners not to cause obstruction to access to respondents to their fields, through road beyond rivulet. Submission raised that road reached dead end at rivulet. Not acceptable. Spot inspection report clearly shows that road proceeds beyond rivulet to fields of respondent. Order directing removal of obstruction, held proper”

iii) **Shrikrishna Sheshrao Dane and Anr. vs. Vasant Ramrao Tayade and Anr. Reported in 2018 (1) ALL MR 397.** It is held that “what was relevant for determination of Mamalatdar under section 5 (2) was existence of way for use and the existence of alternate way cannot be compared with”.

17] The ratio laid down in Vishwanath’s case cited Supra and

Sushilkumar's case cited Supra is not applicable to the present suit because the order passed by defendant Nos.2 and 3 appears to be without an opportunity of hearing and evidence to plaintiff Nos.1 and 2. Spot inspection though relied upon but these plaintiffs are entitled to contest the same.

18] The ratio laid down in Shrikrishna's case cited Supra is also not applicable to the present suit. Because there is no plea of alternate way. It appears from the pleading that plaintiffs are trying to justify the existence of approach way as shown in spot inspection report only to the extent of boundary of Gat No.369.

19] Plaintiffs have approached the court against the alleged order and making efforts to show that the approach way does not exist as it is interpreted. Under such circumstance, if fair opportunity is denied then plaintiffs would have no remedy. In view of this, balance of convenience lies in favour of plaintiffs. For all the aforementioned reasons, I have answered Point No. 2 in affirmative and recorded my finding accordingly.

As to Point No. 3 :-

20] In view of observation made in Point Nos.1 and 2 if at all the order dated 25/07/2023 passed by defendant No.2 and the order dated 12/08/2022 passed by defendant No.3 are acted upon then plaintiff Nos. 1 and 2 would be left with no remedy. The very purpose of filing suit shall stand frustrated. The existence / non existence of the road are the aspects to be proved by evidence. The following of due procedure of law is also the factors to be established. Defendants would be at no loss because opportunity of cross examination will be available. On the other hand, plaintiff shall suffer irreparable loss. The execution of order even on the part of plaintiff Nos.3 to 28 would be effected in the absence of property of

plaintiff Nos.1 and 2.

21] It is material to note that plaintiff Nos.3 to 28 are challenging the procedure followed by defendant Nos.2 and 3. Thus, plaintiffs shall suffer irreparable loss if the opportunity of hearing is deprived to them. For all the aforementioned reasons, I have answered Point No. 3 in affirmative and recorded my finding accordingly.

As to Point No. 4 :-

22] In the result following order is passed;

ORDER

- 1] Application (Exh. 05) is allowed.
- 2] Defendant Nos.4 to 34, by themselves or through their agents, servants, officers or anyone on their behalf are hereby temporarily restrained from taking coercive steps for creation of approach way in terms of implementation of order dated 25/07/2023 and order dated 12/08/2022 passed by defendant Nos.2 and 3; that too without following due procedure of law till decision of suit.
- 3] Parties to bear their own costs.

Date : 21.09.2024

[Priti D. Taru]
Civil Judge Senior Division, Wai
Dist-Satara.

CERTIFICATE

I am affirm that the contents of this P.D.F., file Order are same, word to word, as per the original order.

Name of the Stenographer :- Gauri Mahesh Kulkarni (Steno Grade-II)

Court :- Civil Judge Senior Division, Wai.

Dist. Satara.

Date :- 21.09.2024

Order signed by the presiding officer on :- 23.09.2024

Judgment/order uploaded on :- 24.09.2024