

ORDER BELOW EXH.05
(Passed on 22.06.2023)

This is an application filed **Under Order XXXIX, Rule 1 and 2, r/w. Section 151** of The Code of Civil Procedure for grant of temporary injunction in favour of plaintiff and against the defendants.

2. According to the plaintiff/applicant that he is the owner and possessor of the field Survey No.65 situated at Junagarh, post Kelzar, Tah. Seloo, Dist Wardha, and he received said property from his grandfather Champatrao Ganpatrao Raut. The defendant No.1 is owner of field Survey No. 52, and defendant No. 2 owned by field Survey No. 53, He further submitted that the defendant No. 3 is his father and he is owner of field Survey No. 51, he made him formal party in the suit.

3. It is the case of the plaintiff that his field Survey No. 65 is just behind the field of non-applicants no. 1 and 2 towards north side as shown in plaint map. The plaintiff used the cart way to approach his field Survey No.65 from the cart way existed towards the eastern side of field Survey No. 51, 52, and 53 towards north-south ABCD Dhura as shown in plaint map. He further submitted that he used this cart way to cultivate his field Survey No.65, since his grandfather. The owner of field Survey No. 51 and 54 never obstructed to the plaintiff from using the said cart way to approach his field. However, on 12.06.2022, defendants No.1 and 2

obstructed the bullock cart way of plaintiff at point “C” shown in plaint map by putting obstacles of wood, thorny trees, fencing wires and stones. Due to which the plaintiff could not reach his field Survey No.65 by his bullock cart. Even after many request the defendants never remove the obstacles. Therefore, he lodged report against the defendant but police did not take any action against the non-applicants and advice to knock the door of court. Hence, he filed instant suit and prayed for grant of injunction against non-applicants No. 1 and 2 by restraining them from obstructing him to approach his field Survey No.65 by bullock cart from ‘ABCD’ suit way during the pendency of suit.

4. Defendants/non-applicants No.1 and 2 filed their written statements and adopted the same to the reply of this application by filing pursis **Exh.18**. They have specifically denied the cart way of plaintiff to approach his field Survey No.65. It is the case of defendants that the plaintiff already having old way to reach his field through Shiv which is appurtenant to field Survey No. 44 and 45. The plaintiff and his ancestral were used said Shiv to approach his field Survey No.65. The plaintiff never used suit way, he has alternative way and he has no need of the suit way. Defendants further submitted that the field Survey No. 44, 49, 66, 67 and 65 are owned by the plaintiff. There is another approach way to the plaintiff to cultivate his above said field, he can approach his Survey No. 65, more conveniently from his other fields. The defendants further submitted that they have not made any obstruction as alleged. They objected that the plaintiff should have filed the case before Mamlatdar Court and not before this

Court. The plaintiff filed bogus and unreasonable application to harass the defendants. Hence, they prayed to reject the application with costs.

5. Perused the application and say, Heard Ld. Advocates for both parties. They argued according to their respective pleadings.

6. The following points are taken for discussion. I have recorded my findings along with reasons thereof.

	Points	Finding
1.	Whether the plaintiff/applicant proves that there is prima-facie case in his favour?	Yes.
2.	Whether plaintiff proves that the Balance of convenience lies in his favour?	Yes.
3.	Whether plaintiff prove that heavy and irreparable loss will be Caused to him if injunction is refused?	Yes.
4.	What order	Application Allowed

R E A S O N S

07. As to points No.1 to 3 : As all these points are inter connected with each other. Hence, I discuss them altogether to avoid repetition. While deciding the application of temporary injunction, the plaintiff has to prove three ingredients i.e prima facie case, balance of convenience is in his favour and irreparable loss will be cause to him if temporary injunction is not granted.

08. In order to prove the prima-facie case plaintiff has filed plaint map and other documents i.e. 7/12 extract of field Survey No. 65, Gav Namuna 8-A, mutation entry (ferfar) extract-Namuna 6 to show the ownership over the Survey No. 65. It is needless to say that the ownership of the plaintiff and defendants not disputed. It is the dispute only **“whether the plaintiff having right to used cart way to approach to his field Survey No. 65 towards the eastern side from North-south Dhura of defendant’s field Survey No. 51, 52, and 53 which shown by letters ABCD in the plaint map?”** The plaintiff has filed the list of documents at Exh. 4, in which he filed document No. 16 i.e. the Order of Tahsildar, Seloo, passed on 19.12.2011.

09. On perusal of the said Order, it is seen that defendants No.1 and 2 were applied for grant of cart way from the field Survey No. 51, to approach their respective fields Survey No. 52 and 53. After necessary inquiry and visiting the spot, Hon’ble Tahasildar, Seloo had recorded the statements of both parties. During the recording of statement the father of plaintiff namely Krushna Champatrao Raut agreed and ready to give the cart way to the applicants Subhash banker and Suresh Waskar from his field Survey No.51 on condition that they shall allow him to used their Dhura to approach his field Survey No. 65. Thereafter, during the statements of defendants No.2 and 3 they were also agreed that they will allow the plaintiffs father to used their Dhura to approach the field Survey No. 65 for the north-south dhura described in plaint map by letters ABCD. Accordingly, on the above terms and conditions the dispute was amicably settled and on that basis

Hon'ble Tahsildar, Seloo pleased to passed the order dt. 19.12.2011 as follows.

आदेश :- “अर्जदार यांना स.नं. ५२ व ५३ मध्ये जाण्याकरीता गैरअर्जदार यांनी स.नं. ५१ चे पुर्वेकडील उत्तर दक्षिण धु-याने बैलबंडीने अर्जदारांनी गैरअर्जदार यांचे शेतातील कोणतीही पिकाची नुकसान होणार नाही याची काळजी घेवुन मालाची ने-आण करावी. तसेच गैरअर्जदार यांनी स.नं. ६५ मध्ये जाण्यासाठी अर्जदाराचे स.नं. ५२ व ५३ चे पुर्वेकडील उत्तर-दक्षिण धु-याने बैलबंडीने गैरअर्जदारांनी अर्जदार यांचे शेतातील कोणतीही पिकाची नुकसान होणार नाही याची काळजी घेवुन मालाची ने-आण करावी. अर्जदार व गैरअर्जदार यांनी बैल व जनावरे नेतांनी मुसके लावुन व हाती धरुन न्यावीत.’”

10. That the order of Tahsildar never been challenge by any of the party. Hence, said order becomes unchallenged and attained its finality. The defendants used above said cart way from the field of defendant No.3 who is father of the plaintiff on condition that they have no right to restrain the user of Survey No. 65 to use the said cart way to approach his field Survey No. 65. On mere perusal of the order passed by Tahsildar, Seloo, it apparently seen that the plaintiff and defendants both have right to used said way to approach their respective fields.

11. That the plaintiff filed a certified copy of Judgment passed by my predecessor, the Civil Judge Junior Division, Seloo in RCS No. 81/2012, decided on 29.03.2022. That the said suit was filed by this defendants no.1 and 2 against the father and grandmother of this plaintiff for the declaration and permanent

injunction in respect of customary way (that is the same cart way mentioned in this suit) to approach their field survey no. 52 and 53. That the above said suit was partly allowed in favour of the plaintiff (defendants no.1 and 2 of this suit).

12. On careful perusal of the Judgment passed in RCS No. 81/2012, it appears that in that suit, the issue no.1 was framed in a fashion that **“Whether plaintiffs proved that defendants have alternative way to have access to their land”** the finding of this issue was given in negative. While discussion of the said issue my predecessor has given specific finding that the survey nos. 51, 52, 53 and 65 are appeared in one line and the Tahsildar, Seloo has granted the way from eastern boundary (dhura) of survey no. 52 and 53 to approach survey nos. 65 and 66. Plaintiffs are failed to prove which of the alternative way available to defendants (plaintiff’s father and grandmother)” by given the specific finding as discussed above, my predecessor has given the answer of issue no.1 in negative.

13. Moreover, the defendants admitted that as per the order of Tahsildar they are using cart way from the survey no. 51, it apparently shows that there is a cart way to approach the survey no. 65, and both parties have a right to use said way to approach their respective fields. Considering the finding given in RCS No. 81/2012 and order of Tahsildar, Seloo, it prima-facie seen that the plaintiff has a right to approach his field survey no. 65 from the cart way existed from eastern boundary (dhura) of survey no. 52 and 53 as shown in plaint map by letters ABCD. Hence, plaintiff has well established his case prima-facie in his favour.

14. It is undisputed that after necessary inquiry and considering the statements of both parties, Hon'ble Tahsildar, Seloo passed an order to grant of cart way to the defendants no. 1 and 2 and plaintiff's father to approach their respective fields. That defendants no.1 and 2 are using said cart way without disturbance of the plaintiff, but according to the plaintiff he has been restrained by the defendants no.1 and 2 at the point "C" mentioned in plaint map. The order of Tahsildar is more specific and the finding of the Civil Court, Seloo in RCS No. 81/2012 is also specific that the field survey no. 51, 52, 53 and 65 are in one line. It is undisputed that the defendants are using said way. It apparently shows that the cart way is now available to approach the field survey no.65. Considering this aspect, the balance of convenience also lies in favour of the plaintiff.

15. Plaintiff has to prove that by refusing the injunction, greater and more inconvenience will be caused to him, if the injunction as prayed is refused. It is the settled principle of law that the court while considering temporary injunction application should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties. If injury caused to the plaintiff is far greater than that may be caused to defendant, then grant of temporary injunction in favour of plaintiff would be proper. While weighing the possibilities or probabilities of likelihood of injury due to order of temporary injunction, the court should also consider the convenience or inconvenience which would be caused to either of the parties.

16. Irreparable loss is nothing but it is the injury which is substantial and could never be adequately remedied or atoned for by damages or it can be said that injury which cannot possibly be repaired. The injury for which there does not exist any standard for ascertaining the actual damage likely to be caused is said to be irreparable injury. The plaintiffs must satisfy the court that he will suffer irreparable injury, if the injunction as prayed is not granted and there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury and the loss which cannot be compensated in terms of money.

17. In the suit at hand, the plaintiffs establish his case prima-facie in his favour. It is undisputed that the defendants using the cart way form the field survey no.51 owned by the father of plaintiff and said cart way approach to the survey no. 65 of the plaintiff. As per the order of the Tahsildar, Seloo, plaintiff has a right to used said existing cart way to approach his field. There is no possibility of damaging any crop of the defendants if the injunction is given in favour of plaintiff. On the contrary in RCS No.81/2012 the clear finding about the non-availability of alternative way to the plaintiff to approach to his field survey No. 65. Hence, if injunction is not granted then the plaintiff certainly will cause more hardship and his field may falls in barren condition. Hence, the plaintiff has satisfied the court that he will suffer irreparable injury if temporary injunction refused.

18. Therefore, in my considered point of view, if injunction is rejected, the plaintiff will definitely suffer more hardship than defendants. Therefore, in the present situation, it is

necessary to restrain the defendants No.1 and 2 from creating any obstruction to the plaintiff from using the cart way specifically mention by letters ABCD in the plaint map till the disposal of present Suit. Hence, for the above discussion, I answered points No. 1 to 3 in the affirmative and pass the following order.

ORDER

1. Application is allowed.
2. The defendant No.1 and 2 are hereby temporary restrained from creating any obstruction to use the existing cart way of plaintiff to approach his field survey no. 65, more specifically mentioned by letters ABCD in plain map till the disposal of this suit or till the further order of this court.
3. The defendants are directed to remove the obstacle created in the cart way if any within thirty days from this order, else plaintiff has right to remove said obstacle on his own expenses, costs will be saddled on the defendants no. 1 and 2.

Dt. 22.06.2023
Seloo

(S.W.Shegokar.)
Jt. Civil Judge Junior Division,
(Court No.2) Seloo.