

**ORDER BELOW EXHIBIT 05**(Passed on 16<sup>th</sup> February, 2018)

1] By way of present application the applicant/plaintiff is seeking temporary injunction against defendants restraining them from using any portion of the suit field.

2] It is submitted by the applicant that applicant had challenged the order of Tahsildar by way of present suit in view of provision u/s 143 [4] of Maharashtra Land Revenue Code. In fact, defendants moved application to the Tahsildar, Karanja to grant access to field survey No.62/2 which came to be allowed on 31/07/2014. Thereafter being aggrieved by the order of Tahsildar the plaintiff challenged the order before S.D.O. which came to be rejected on 08/07/2015. Thereafter he had challenged the order of S.D.O. before Additional Collector but his appeal was rejected on 30/03/2016. Thereafter present plaintiff preferred revision against the order of Additional Collector before Divisional Commissioner but again his revision was rejected on 09/05/2017. The order of Divisional Commission was challenged in Writ Petition No.4785/2017 before the Hon'ble High Court of Judicature, Bombay, Bench at Nagpur but it was disposed as plaintiff had sought leave to withdraw petition with liberty to seek appropriate remedy in respect of his grievance in the writ petition before the Civil Court. The said petition is disposed off as withdrawn with liberty as prayed. In fact, there was no road from field No.61/1 or 61/2 owned by the plaintiff and defendants never used any portion of suit field to approach their field survey No.62/2. Therefore, it is necessary to restrain the defendants from using any portion of the suit fields till decision of suit.

3] After service of notice the defendants appeared and filed their say to injunction application. It is submitted by the defendants that the defendants are owners and possessors of land survey No.62/2, and there is Pandan road of survey No.61 coming from village which is available for survey No.60, 61 & 63. but same was not accessible to survey No.62/2 as it is situated towards Northern side of survey No.61. The survey No.61 is divided into East-West direction as 61/1 and 61/2. The defendants since their forefather used said road to come from Pandan road through the boundary of survey Nos.61 & 66 from eastern side of survey No.61. Earlier in view of order dated 31/07/2014 of Tahsildar the defendants have access to their field from eastern boundary of survey No.61 after detailed enquiry and spot inspection. The said order was challenged up to High Court and thereafter suit came to be filed. The plaintiff had intentionally precluded the defendants from using the said road to access their field. Even since the date of order of Tahsildar the defendants are deprived of using said way to have access to their field. Therefore, since 2014-15 the defendants could not cultivate their field as they could not take agricultural equipments with them and caused loss. With these submissions prayed for rejection of application.

4] Heard both learned Advocates and perused the record, following points are arisen for my consideration and I record my finding for the reasons below:-

S.No	Points	Findings
1	Whether applicant shows her prima facie case ?	Negative

2	Whether applicant would suffer irreparable loss, if injunction refused coupled with greater inconvenience ?	Negative
3	What order ?	As per final order

**REASONS FOR ANSWERS**

**As to point Nos. 1 and 2 :-**

5] The settled principle of law is that who seek injunction should have to show his prima-facie case and the consequence if that relief of injunction not granted in his favour amounts frustration of suit as well his rights are in danger. Along with the same, the irreparable loss which he could suffer coupled with the balance of convenience along with inconvenience. Thus, it is just to consider the aspect of prima facia case whereby applicant sought relief of injunction or the grounds on which he agitated to restrain non-applicants from continuing road construction work which caused hardship and hurdle in enjoyment of rights.

6] It would be proper to mention here the admitted facts to the parties for brevity of discussion. Both parties have admitted their title and possession over respective fields mentioned in the plaint. Also the rounds of proceedings initiated before Revenue Authority. Further the existence of Pandan road is also admitted by the parties. Now in the light of above admitted facts and circumstances of the case averred by the parties application for injunction is taken into consideration.

7] The plaintiff submitted that road was illegally granted by Tahsildar and already defendants have approach road to their survey

No.62/2 which passes through Gat No.62/2-A and thereafter the defendants are interested to have road from the property of plaintiff. In fact, those roads were used by the defendants and they do not have any hardship or irreparable loss for cultivation.

8] It is pertinent to mention here that, being pre-evidence stage the documents on which applicant relies are taken into consideration without formal proof. The plaintiff sought injunction to restrain the defendants from using road as granted by order of Tahsildar from eastern boundary of Gat No.61. Then the question arose whether after said order actually road was laid down and made available in compliance and execution of order of Tahsildar. I perused all documents filed on record but in no document it shows that the road was come into existence and used for egress and ingress by the defendants to cultivate the suit property as they sought in revenue proceeding. Even this aspect corroborate to the contents of plaint wherein the plaintiff submitted that the defendant never used any portion of the suit field of survey No.61/1 and 61/2 to approach their survey No.62/2. Even the say of defendants does not disengage from the submissions of the plaintiff. But the defendants submitted that they are using the said way but how and when road was laid down or for the sake of moment it is considered that it is already in existence, then when it was open by the revenue officers is not made clear. The defendants goes one step ahead and stated that they are unable to cultivate suit property since the year 2014-15 but merely submission would not cause any assumption towards non cultivation. Therefore, at this juncture the available documents on record suggest that the defendants were not creating any hurdle to the plaintiff. It also reflected from the record because since the

order of Tahsildar till Writ Petition before Hon'ble High Court nowhere injunction was granted, which firstly passed in favour of plaintiff in the writ petition. Therefore, at this juncture the plaintiff has not come with alleged overt-act of the defendants of use of road given to them. Because it was newly granted thus, needs to be laid down by the Revenue Officer. The same was not pleadings of both parties. Therefore, in view of the above discussion I come to conclusion that applicant not shown his prima-facie case.

9] Now the second aspect of the injunction application is irreparable loss and balance of convenience. The applicant come with case that, applicant alleged use of road would cause irreparable loss to them. Being the agricultural field plaintiff could show the quantity of produce which was lessor in comparison of previous year or even could show that how much area of land was used by the defendants as road along with boundary marks. Therefore, the loss which plaintiff could suffer would not irreparable. Beside this lastly the aspect of balance of convenience with balance of inconvenience. The convenience of one party if create hardship to other, then the convenience and hardship both to be measured on minuscule scale. The plaintiff averred that if defendants used boundary marks as road there could be loss in yield or agricultural production. Certainly that can be but if defendants precluded from using the said road, then loss of cultivation would be comparatively more than the convenience. The plaintiff averred that defendants have alternative road but no document is available on record which could support their submissions. As mentioned above this is pre-evidence stage and facts become more clear through the evidence. Therefore, at this juncture in view of the available

documents on record I come to the conclusion that balance of convenience not lies with the applicant.

10 ] Therefore, in view of above discussion I come to conclusion that the applicant failed to show her prima-facie case and also failed to show balance of convenience in her favour along with possibility to suffer irreparable loss. It is settled principle of law that, the relief of injunction being discretionary and equitable relief, the applicant should show all three ingredients lies in his favour. If any ingredient is not satisfactorily shown, he is not entitled for the relief of injunction. My view if fortified by the ratio laid down in case of **Best sellers retail Vs.. Aditya Birla Nuvo** reported in **(2012) 6 SCC 792**. Here in present case, applicant failed to show prima-facie case, thus, I come to conclusion that the applicant is not entitle for the relief of injunction and pass following order.

**ORDER**

- i) Application is rejected.
- ii) No order as to costs.

**Sd/-**

[Mukul M. Chitale]  
Joint Civil Judge Jr. Dn.  
Karanja [Lad], Dist. Washim.

Date: 16/02/2018.

**CERTIFICATE**

I affirm that the contents of this P. D. F. File Judgment/Order are same word to word, as per the original Order.

Name of Stenographer : B. A. Ukey, Stenographer [L.G.]

Court Name : Jt.Civil Judge (JD) & JMFC,  
Karanja [Lad], Dist. Washim.

Date : 16/02/2018.

Order signed by the Presiding  
Officer on : 16/02/2018.

Order uploaded on : 17/02/2018.