

MHRT040000172025



Received on : 04-01-2025

Registered on : 04-01-2025

Decided on : 10-01-2025

Duration : Ys. Ms. Ds.
00 00 06**IN THE COURT OF I/C DISTRICT JUDGE-1 KHED,****DIST. : RATNAGIRI****(Presided over by P.S.Chandgude, I/C District Judge-1 @ District
Judge-2, Khed Tal.Khed, Dist.Ratnagiri)****Misc Civil Appeal No.1/2025****Exh. No.25**

Konkan L.N.G.Limited	)	Appellant
Chief Manager (O & M) Amresh Bedar	)	(Original
Office Add : At & Po.Anjavel	)	Defendant
Taluka Guhagar, Dist. Ratnagiri	)	No.1 and 2)

Versus

- | | | |
|---|---|--------------------|
| 1. Shri Avinash Gangadhar Narvankar |) | Respondents |
| Aged 70 years, Occ : Agriculture |) | (Original |
| Residing at Dabhol, (Upper Section) |) | plaintiff) |
| Taluka Dapoli, District Ratnagiri |) | |
| Through Constituted Attorney |) | |
| Shri Sandeep Ashok Devlekar, |) | |
| aged 46 years, Occ: Agriculture & Business |) | |
| residing at Dabhol (Upper Section) |) | |
| Tal.Dapoli Dist.Ratnagiri |) | |
| 2. L & T Construction on behalf of Director |) | Respondents |
| Rathina Sami |) | |
| Office Add: At & Post. Anjavel |) | |
| Taluka Guhagar, Dist.Ratnagiri |) | |
| 3. Grampanchayat Usgaon on behalf of |) | |
| Add: Usgaon, Tal.Dapoli, Dist. Ratnagiri |) | |

Appearance :-

Mr.K.S.Mohite and Mr.Kartik Seth, Advocates for Appellant

Mr.S.D.Kothari, Advocate for the Respondent No.1

Mr.Y.V.Dandekar, Advocate for the Respondent No.2

Mr.S.P.Belose, Advocate for Respondent No.3

J U D G M E N T

(Declared on 10th day of January, 2025)

1. Being aggrieved by the order dated 26-12-2024 passed by Learned Civil Judge, Junior Division Dapoli in R.C.S.No.131/2024 below Exh.27 thereby granted status-quo in favour of the Respondent the appellant has preferred this appeal. The parties are hereinafter referred as per their original nomenclature in the said suit.

2. The plaintiff preferred application below Exh.27 in R.C.S. No.131/2024 demanding status-quo order. It is submitted that the plaintiff has filed suit for permanent injunction and therein preferred application below Exh.5 for temporary injunction. The notice of application and summons of the suit was served on the defendants. The defendants illegally encroached upon the suit property to transport accropodes. They are threatening the plaintiff that they will prepare road if the plaintiff raised dispute in any Court the result will be against him. They have acquaintance in the Government etc. The plaintiff approached Coastal Police Station Dabhol to lodge FIR on 25-12-2024. But police refused to lodge FIR and asked the plaintiff to get order from Civil Court. The defendants appeared in the suit and filed their say and written statement. It will take time to decide application for temporary injunction and prayed for status-quo.

3. The defendant No.1 and 2 resisted the application by filing say at Exh.29. It is contended that defendant No.1 and 2 have appointed defendant No.3 as their contractor to complete project of constructing break water wall at Jetty. The work of shifting accropodes is going on since December 2023 till date under police protection as per order of Hon'ble High Court. The said accropodes are stored on land mentioned in paragraph No.9 of say. From the said site said accropodes are carried by trailer by using Zilla Parishad Road upto shipyard of Square port Shipyard Private Limited. As stated in the reply the defendant No.1 to 3 are using Zilla Parishad Road. The defendant No.1 to 3 are not using any portion of land of plaintiff. The defendant No.1 to 3 are not at all using suit land even as per documents produced by defendant No.4. The road being used by the defendant No.1 to 3 for shifting accropodes is Zilla Parishad road which is a public road. The project is of National interest and same is infrastructure project. More than 90% of work is completed. In case any status-quo order is granted the same will delay the project and will cause huge loss not only to defendant No.1 and 2 but also to nation. It is prayed to reject the application.

4. The defendant No.3 resisted application by filing say at Exh.30 contending that the plaintiff has half share (8 ana) in the suit property and Bharatiya Shipyard Limited has half share in the suit property. The cosharer of the plaintiff has sold their half share to Bharatiya Shipyard Limited. Since then the road is in existence. The disputed road is in existence since 20 years and the plaintiff has not taken objection. The defendant No.3 is transporting accropodes as per

the order of defendant No.1 and 2. If the road will be closed the defendants will cause irreparable loss. The plaintiff has not challenged the sale deed and not demanding partition as a consequential relief. Therefore it is prayed to reject the application.

5. The learned trial Court by passing order on 26-12-2024 asked both the parties to maintain status-quo till next date. The status-quo was continued. Thereafter as the defendants submitted before the Trial court that they have preferred appeal before the District Court against the order dated 26-12-2024.

6. Heard learned Advocates of both the parties. It is not out of place to mention that both the senior counsel Shri.Giridhari for appellants and Shri.Kothari for the Respondents conducted the matter with utmost decency.

7. Following points arise for my consideration and determination. I recorded my findings on these points for the reasons stated below.

POINTS

FINDINGS

1 Whether the order of Learned Trial Court needs interference?

Yes.

2 What order ?

As per final order.

REASONS

AS TO POINT NO.1 AND 2

8. The learned trial Court in para 6 of the order observed that the usage of road is admitted fact. The plaintiff and defendant No.1

and 2 are co-owners is admitted fact. The fact of the transportation is admitted one. The said transportation is illegal or legal is a part of evidence. Moreover without say of defendant No.3 and 4 dispute regarding it cannot be decided on merit. As the road passed through the suit property is public road is admitted fact during argument the advocate for plaintiff submitted that he is not claiming the status-quo against the defendant No.4. Till filing say of defendant No.3 and 4 is important to maintain the status-quo of the suit property otherwise the matter will become more complicated. Therefore plaintiff and defendant No.1 to 3 are directed to maintain status-quo as it is till filing say. The transportation of accropodes through heavy containers by the defendants is legal or not is a part of documentary evidence. But till date in order to protect suit property and to maintain the position at present the application deserves to be allowed.

9. Furthermore the Respondents produced say of defendant No.3 today before submitting remaining part of the argument. As per the say of defendant No.3 after a slumber of more than 15 years since execution of sale deed dated 24-03-2009 the plaintiff has made a futile effort to bring up the issue of partition to support the baseless cause of present suit.

10. It must be considered that as per the averment in the plaint the suit property was originally owned by Jagannath Ravji Vaidy. It was purchased by Mahadev Bhikaji Narvankar and Ramchandra Bhikaji Narvankar on 21-12-1941 for consideration of Rs.1,200/-. Mahadev Narvankar died in the year 1961 and Ramchandra Narvankar died in

the year 1988. Legal heirs of Mahadev Narvankar executed sale deed in favour of Bharatiya Shipyard Limited on 24-03-2009 of their half share i.e. 32.09. The plaintiff was obstructed on 14-12-2024 at about 10.30 A.M. Defendant No.4 told the plaintiff that defendant No.1 and 3 will be giving donation for development to the Grampanchayat and not to obstruct them.

11. Thus the plaintiff has filed the case on the basis of his half share in the suit property. For that purpose he relied upon 7x12 extract of the suit property. The 7x12 extract shows that Bharati Shipyard Limited and plaintiff and some other persons are owner of gat No.49/1 at Post Usgaon, Dapoli. The map produced by land record office does not show partition of property No.49/1. Furthermore the sale deed of the suit property dated 24-03-2009 between the legal heirs of Mahadev Narvankar and Bharati Shipyard Limited shows that half share of suit property 49/1 at Post Usgaon admeasuring 32.09 was sold. Therefore as per the sale deed and the 7x12 extract Bharati Shipyard Company is owner of half portion of the land. It is also mentioned in the possession receipt that the property gat No.49/1 is jointly owned by the transferor. Therefore it is clear that the suit property is not partitioned though Ramchandra Narvankar and Mahadev Narvankar died in 1988 and 1961 respectively.

12. The appellant has produced copies of photographs on record showing the tar road on the suit property. They have produced map issued by Assistant Engineer, Zilla Parishad which shows road No. 42 abating the property of Bharati Shipyard Company Usgaon.

According to the plaintiff said map is manipulated. However road No.42 Dabhol to Usgaon is 4 kilometer road. From these documents it can be seen that the road is used by the villagers for many years.

13. The learned advocate of the defendants submitted that coowners are not made parties. Injunction cannot be granted for transport on public road. The burden is on the plaintiff to prove that there exists no road in the suit property. Injunction cannot be granted as per section 41(ha) of Specific Relief Act. He relied upon following rulings-

(a) **Hon'ble Supreme Court** in Rangammal Vs. Kuppuswami and Anr., AIR 2011 SUPREME COURT 2344, support of his submission that

(b) **Hon'ble Supreme Court** in Manisha Mahendra Gala Vs. Shalini Bhagwan Avatramani, (2024) 4 S.C.R.357

(c) **Hon'ble Bombay High Court** in Godawaribai Purushottam Bawaskar Vs. Sitaram Bhagwan Paithane, 2020(3) Mh.L.J. 102

14. On the contrary the learned advocate for the defendant Shri.Kothari submitted that the plaintiff has proved his possession over the suit property. The defendants are purchaser of share in the suit property unless and until they demand partition by meats and bounds they have no right to encroach upon the suit property. Furthermore he submitted that the prima facie case and balance of convenience is in favour of the plaintiff as many complicated issues arising it cannot be doubted that suit gave rise to serious substantial questions of fact and law. It is proper to grant interim relief. The documents produced on record shall be considered without formal proof. The Court has to see

whether the party seeking assistance of the Court was at any time in lawful possession of the property and if it is so established what would prima facie ask the other side contesting the suit to show that the plaintiffs were dispossessed. For that purpose he relied upon following rulings-

- (a) **Hon'ble Bombay High Court** in Maruti Samba Surve Vs. Parshuram Krishna Koratkar, 1983 BCI (0)109
- (b). **Hon'ble Bombay High Court** in Gram Panchayat Kuhu and another Vs. Vijaykumar Radheshy Bhalotiya, 1986 Mh.L.J. 618
- (c). **Hon'ble Supreme Court** in Ramdas Vs. Sitabai and Others, 2009(2) Mah.L.R. 894(SC)
- (d). **Hon'ble Bombay High Court** in Smt.Henriqueta S. Alonso Vs. Lino Falcaon, 1997(1)B.C.J.411
- (e). **Hon'ble Bombay High Court** in Arun Industries Vs. State of Maharashtra, 1990(3) Bom.C.R. 472
- (f). **Hon'ble Bombay High Court** in Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde, 2008(2) Mh.L.J.819
- (j). **Hon'ble Supreme Court of India** in Gangubai Babiya Chaudhary Vs. Sitaram Bhalchandra Sukhtankar 1983 AIR Supreme Court 742.

15. As discussed earlier the half portion of the part of suit property was purchased by Bharati Shipyard Limited in 2009. Furthermore the learned Trial Court has observed that the road passed through the suit property is a public road is a admitted fact and during the argument the advocate for the plaintiff submitted that he is not claiming the status-quo against the defendant No.4. In addition to that the appellant has filed photograph of the road with daily news paper

Pudhari dated 03-01-2025 which shows that the tar road is in existence. It is submitted that the defendants are transporting accropodes since December 2023. Furthermore there was obstruction by some persons and therefore Hon'ble Bombay High Court has passed order of police protection in favour of defendant No.1 and 2 in Writ Petition No.1700/2023 which was passed on 03-05-2023. Though the defendants have got order from Zilla Parishad for Road No.42 from Dabhol to Usgaon and for road No.122 from Nawase to Bhati. Under such circumstances unless the temporary injunction application shall be considered on merit it is not proper to pass status-quo order in respect of transportation of accropodes. The order of status-quo can be interpreted in both ways. Therefore the Court shall not pass such order unless and until satisfied itself on the merit of the case. It is also cardinal principle of law that in case of conflict between individual right and public interest, public interest shall be protected. It must be considered that the project is of national interest and the same is infrastructure project. More than 90% work is completed. Under such circumstances the impugned order needs to be intervened. The learned trial Court shall proceed to dispose off application of temporary injunction as early as possible. The parties shall not take unnecessary adjournment and shall help the learned Trial Court to dispose off application on merit. In the result I pass following order :-

ORDER

1. Appeal is allowed.
2. The order dated 26-12-2024 passed by Learned Civil Judge, Junior Division Dapoli below Exh.27 in R.C.S.No.131/2024 is hereby set aside.

3. Record and proceeding be sent to Ld. Trial Court.
(Dictated and Pronounced in open Court.)



Digitally signed
by CHANDGUDE
PRASANNA
SHARAD
Date: 2025.01.10
18:07:59 +0530

Date : 10.01.2025

(P.S.Chandgude)
I/C District Judge-1 @ District Judge-2, Khed,
Tal. Khed, Dist. Ratnagiri.

CERTIFICATE

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

Name of the English Stenographer	Mrs.V.S.Kulkarni
Name of the Court	Shri. P. S. Chandgude, I/C District Judge-1 @ District Judge-2, Khed, Dist. Ratnagiri.
Date of Pronouncement	10.01.2025
Judgment/order Signed On	10.01.2025
Judgment/order digitally Signed On	10.01.2025
Judgment/order Uploaded On	10.01.2025