

MHRG140004292015

RCS No. 50 of 2015

Nanda Ulhas Mazgaonkar

v.

Rajesh Prashuram Koli & others

Order passed below Exhibit 40 in RCS No. 50 of 2015

1. The defendants have filed this application under Order 26, Rule 9 of the Code of Civil Procedure (CPC).
2. Plaintiff has filed her say.
3. Heard Ld. Advocate of the defendants and plaintiff.

Application and argument of the defendants:

4. Ld. Advocate for the defendants has argued that the plaintiff has filed the present suit seeking a permanent injunction and a temporary injunction. In the plaint, the plaintiff has described the suit property as situated at Boripakhadi, Survey No. 97, Hissa No. 1/A/6, admeasuring 0 Hectare 10 Ares (10 Gunthas). However, the plaintiff has not specified the four boundaries of the suit property in the plaint. Further, no survey map of Survey No. 97, Hissa No. 1/A/6 is available in the records of the Taluka City Survey Office. The plaintiff herself does not know the exact location of the suit property.

5. The plaintiff must strictly prove that the property described in the plaint and the property existing on the ground are one and the same. Neither the plaintiff nor her late father, Krishna Narayan Koli, was ever in actual possession or occupation of the suit property. Neither the plaintiff nor her predecessor ever exercised possession, use, or enjoyment of the property. There was never any poultry shed on the suit property, either in the past or at present. The plaintiff is merely recorded as the occupant in the 7/12 extract and is allegedly attempting to misuse this revenue entry to unlawfully establish possession through intimidation.
6. The defendants are office bearers of Shri Ekvira Devi Samajik Vikas Sanstha, a public trust situated at Mora Koliwada. Adjacent to the suit property, towards the west in Mora Phad No. 7, near the hill, is an ancient cave temple of Goddess Ekvira, believed to date back to the Pandava period. The area in front of and adjoining the temple, consisting of steps, an access pathway, and an open space used for festivals, measures approximately 15 gunthas.
7. In the year 2013, a builder named Ramzan Kasam Sheikh constructed four to five buildings in Phad No. 7 by encroaching upon the pathway leading to the temple. Following protests by the residents of Mora Koliwada and devotees of the Ekvira Devi Temple, Ramzan Kasam Sheikh transferred 156 square metres of land to the Uran Municipal Council for providing access to the temple. Due to the efforts of the temple authorities and villagers, a proper access road became available near Survey No. 97/1/A/6.

According to the defendants, taking advantage of the availability of this road, the plaintiff developed an intention to encroach upon the temple land despite never having possession of the property or operating any poultry business. The land standing in the plaintiff's name in the revenue records is situated elsewhere, that the plaintiff herself does not know its exact location, does not possess its survey map, and has failed to annex such map with the plaint. Therefore, the plaintiff must first establish the exact location of the land recorded in her name by leading strict evidence, and for this purpose, a Court Commissioner from the T.I.L.R. (Taluka Inspector of Land Records) should be appointed to identify and demarcate the suit property.

Say and argument of plaintiff:

8. Ld. advocate for the plaintiff has submitted that the suit property was permanently granted to the plaintiff's late father, Krishna Narayan Koli, by the District Collector, Raigad, for the purpose of carrying on a poultry farming business. Accordingly, the property was permanently allotted to him with possessory rights. Revenue Entry No. 1718 in the records of Village Boripakhadi, Taluka Uran, records the late Krishna Narayan Koli as the occupant of the suit property. According to the plaintiff, these documents clearly establish her title to the suit property.
9. After the death of the plaintiff's father on 14.01.1996, the names of his legal heirs, namely the plaintiff's elder sister and the plaintiff herself, were entered in the revenue records by Mutation Entry No.

2212. Subsequently, the plaintiff's elder sister executed a registered Deed of Relinquishment, relinquishing all her rights, title, and interest in the suit property in favour of the plaintiff. The said relinquishment was duly recorded under Mutation Entry No. 2223 in the revenue records of Village Boripakhadi, Taluka Uran. Consequently, the plaintiff became the sole lawful occupant and possessor of the suit property. After the demise of her father, she has continued the poultry farming business on the suit property. According to her, she has been in peaceful possession, occupation, and enjoyment of the property, and no other person has ever had any legal right, title, or interest therein.

10. The poultry shed constructed by her late father during his lifetime had become old and dilapidated, making it impossible to continue the poultry business without repairs. Therefore, on 05.09.2013, she submitted an application to the Office of the District Collector, Raigad, seeking permission to repair the shed. After obtaining the permission, the plaintiff transported construction materials such as stones, bricks, and sand to the suit property for carrying out the repair work. The defendants began obstructing her from around October 2014. They came to the suit property and declared that they would not allow any repair work to be carried out. The plaintiff submitted a written complaint to the Assistant Commissioner of Police, Nhavasheva.
11. Although the defendants have stated in Paragraph 6 of their written statement that they are office bearers of the Shri Ekvira Devi

Samajik Vikas Sanstha, a public trust at Mora Koliwada, and that the area comprising the steps leading to the temple, the access pathway, the open space in front of the temple, and approximately 15 gunthas of surrounding land is in their possession and use, they have not produced documentary evidence in support of these contentions.

12. The plaintiff has no objection if the defendants independently seek measurement of the property allegedly in their possession through the Taluka Land Records Department. However, the defendants must first establish, by prima facie evidence, that such property is actually in their possession. According to the plaintiff, the defendants cannot use the process of court-appointed measurement to create evidence in support of claims for which they presently have no documentary proof. Therefore, the application may be rejected.

Reasoning:

13. The present suit is for restraining the defendants from creating any obstruction in the poultry business and from creating any hindrance in the construction in her property.
14. The suit is not for removal of encroachment. There is no specific reason assigned by the defendants for appointment of court commissioner. Defendants have themselves stated that the plaintiff must first establish the exact location of the land recorded in her name by leading strict evidence. The defendants have not only

sought the measurement of the suit property but also their property. The court cannot be used for collecting evidence for the parties.

15. An application was filed by the plaintiff for the appointment of the court commissioner at Exhibit 28. However, the said application has been rejected vide order dated 14.12.2018.
16. It is settled principle of law that once an issue has been decided, it needs to be challenged. No application on the same issue, which has been decided, can be entertained.
17. In view of the above facts and circumstances, I am not inclined to allow this application. Accordingly, I proceed to pass the following order:

::ORDER::

Application at Exhibit 40 is rejected

Sd/-

(Ms. G.K.R. Tandon)

2nd Jt. Civil Judge, Junior Division
Uran

Place : Uran

Date : 14.08.2026