

MHAH050003332023



ORDER BELOW EXH.05 IN R.C.S.

NO.140/2023.

Sanjay Gajanan Dhanwate

Vs.

The Collector, Ahmednagar & ors.

This is plaintiff's interim injunction application against defendant nos. 04 to 09, temporarily restraining them from executing the order of defendant no. 02, Tahasildar, passed in Rasta case No. 681/2023. Perused plaint, written statement of contesting defendant nos. 01 to 03 and 04 to 09 (Exhs. 17 and 19). Perused documents relied by plaintiff with list(Exh.03). Perused documents relied by defendants with list(Exhs. 22, 24 and 26).

02. Plaintiff avers to be the owner of property bearing Gut no.232, Adm. 1H. 64 Ares, Pot-kharab 15 Ares, situated at Mauje Naur, having following boundaries. :-

Towards East - Rampur Shiv.
Towards South - Gut no. 233.
Towards West - Gut no.233.
Towards North - Godavari River.

(Said property hereinafter referred as the suit property for brevity.)

03. Plaintiff and his brother Kishor Gajanan Dhanwate, are in possession of the suit property having Naur-Rampur village Shiv, on its eastern direction. On eastern direction of the Shiv lies deft. nos. 04 to 09's landed property.

04. Gut nos. 69 and 70 are owned by deft. nos. 04 to 09. Its owners along with the owners of Gut nos. 67 and 68, have moved

application for the survey of their respective landed properties which beared measurement proceeding nos. (hereinafter referred as M. R. No. for brevity.) 449/2008, 448/2008, 458/2008 and 480/2008. From 23.08.2008 to 29.08.2008, the joint survey of the properties was conducted by the surveyor of the Office of Deputy Superintendent of Land Records, Shrirampur. After joint survey, the joint map of Gut nos. 67, 68, 69 and 70, was drafted.

05. In proceedings bearing M. R. Nos. 458/2008 and 480/2008, the encroachment was shown in Gut nos. 69 and 70, situated at Mauje Rampur. Accordingly, its owners have moved one application for removal of encroachment before the Office of Sub Divisional Officer, Shrirampur, bearing R. T. S. Appeal No. 72/2010. Prior to filing of this proceeding, deft. no. 06 has moved one application before the Deputy Superintendent of Land Records, raising objection against the survey conducted in proceedings bearing M. R. Nos. 458/2008 and 480/2008, from 23.08.2008 to 29.08.2008. On count of the raised objection, the above proceeding, filed by Jijabai Eknath Khemnar, Laxman Tatya Khemnar and deft. no. 04, against plaintiff, bearing R. T. S. Appeal No. 72/2010, was disposed of.

06. On count of deft. no. 6's application and that of the letter dtd. 22.08.2018, issued by deft. no. 02 Tahasildar, to the office of Deputy Superintendent of Land Records, Shrirampur, for ascertaining and fixing the boundaries of Gut nos. 69 and 70, situated at Rampur, proceeding bearing M. R. No. 719/2018, was initiated. On count of this proceeding, on 20.09.2018, the boundaries of Gut nos. 232, 233, situated at Mauje Naur, and Gut nos. 69 and 70 situated at Mauje

Rampur, were surveyed by the surveyor, using E. T. C. machine.

07. The surveyor of the Land Records Office, Shri. V. S. Thakare, has forwarded one letter dtd. 25.09.2018, to the Office of Deputy Superintendent of Land Records, Shrirampur.

08. In said letter the surveyor has informed to the Office that as per the directions, on 21.09.2018 when he personally visited Mauje Rampur and Mauje Naur, for surveying respective Gut nos. 69, 70, 232, 233 and 234, with the help of E. T. S. machine, during survey, when he matched the originally maps of the survey numbers on the boundaries shown by the possessors, as per their possession, he discovered that the maps of Gut no. 70, having old survey no. 42, situated at Mauje Rampur, and Gut no. 232. having old survey no. 117, situated at Mauje Naur, were overlapping each other, due to which it was not possible to show the boundaries of the respective properties, for which he asked for directions from the Office.

09. Based on the content of this letter, plaintiff avers that it can be assumed that during the survey in proceeding bearing M. R. No. 719/2018, the boundary i.e. the Shiv of Mauje Naur and Rampur, was not ascertained, due to which it could not be fixed.

10. One Jijabai Eknath Khemnar, deft. nos. 1 to 3 and 6, have moved one application for opening the Shiv Rasta against plaintiff other 10 persons, before the Tahasildar, Shrirampur. This application was regarding Gut nos. 69 and 70, situated at Mauje Rampur, and Gut nos. 232, 233 and 234, situated at Mauje Naur, alleging the encroachment on the Shiv Rasta. This application bearing Rasta Case No. 139/2019, was decided on merits by the Tahasildar, Shrirampur,

who has rejected the application.

11. Deft. Nos. 04 to 09, owning property bearing Gut nos. 69 and 70, situated at Mauje Rampur, are having access way towards their landed property through one tar road, running between Mauje Rampur Khemnar Vasti to Mauje Naur, bearing No. M. D. R. 6, laid by the Maharashtra State Government. This road is used by deft. nos. 04 to 09. Despite of having the access road, deft. nos. 04 to 09, on dtd. 31.03.2023, have moved one proceeding bearing Shiv Rasta Case No. 681/2023, before the Office of Tahasildar, Shrirampur. In said proceeding the applicants have prayed for opening the Shiv Rasta lying on eastern direction of Gut nos. 232, 233 and 234 and on western direction of Gut nos. 69 and 70. They also prayed for its survey. This proceeding was against plaintiff and 16 other people.

12. Plaintiff alleges that no opportunity of being heard was given to them in said Road proceeding wherein, the deft. no. 02 Tahasildar, Shrirampur, has issued one letter dtd. 12.04.2023, bearing outward no. कावि / कु.का.३८/२०२३, addressing the Circle Officer, Undirgaon, directing him to open the Shiv Rasta, lying on western direction of Gut nos. 69 and 70, situated at Mauje Rampur, and on eastern direction of Gut nos. 232, 233 and 234, situated at Mauje Naur. He has directed the Circle Officer to open the road under the scheme of Shiv Rasta Maharajasva Abhiyan. He has also directed to Circle Officer to seek required Police protection. Accordingly, the Circle Officer Undirgaon, have issued notice dtd. 28.04.2023, bearing outward no. 162/2023, intimating that on 12.05.2023, at about 11.00 a.m., in morning, under the Scheme, the Shiv Rasta shall be opened.

13. Plaintiff avers that as in proceeding bearing M. R. No. 719/2018, the boundaries of the Shiv Rasta, could not be ascertained and fixed, due to the overlapping of the maps of Gut nos. 70 and 232, this fact was ought to be brought before the deft. no. 02, Tahasildar, by deft. nos. 04 to 09. Deft. nos. 04 to 09, were also obligated to produce the record of proceeding bearing M. R. No. 458/2008, dtd. 31.12.2008, before the deft. no. 02, Tahasildar, while praying for the opening of the road, after 15 years, as per the survey in the proceeding.

14. Plaintiff alleges that deft. nos. 04 to 09, have not produced the record of R. T. S. No. 72/2010, and that of the record of Rasta Case No. 139/2019, before the deft. no. 02, Tahasildar, and have accordingly, misled him. Plaintiff alleges that deft. no. 02, Tahasildar, without verifying said record, have passed the order, directing the Circle Officer, Undirgaon, for opening the Shiv Rasta, who have accordingly, intimated about the opening of the Shiv Rasta, on 12.05.2023.

15. Plaintiff alleges that said order of the deft. no. 02 Tahasildar, is illegal. On the basis of this illegal order and while pendency of the road proceeding bearing no. 681/2023, before the deft. no. 02, Tahasildar, with the help of police machinery, if the Shiv Rasta, is created through the suit property in that case, plaintiff would suffer irreparable loss. Having prima facie case, tilting balance of convenience in his favor, apprehending irreparable loss in case of creation of Shiv Rasta, as per the order of deft. no. 02, Tahasildar, plaintiff is compelled to move the suit with the application claiming temporary injunction. He prays for his application to be allowed.

16. Deft. nos. 01 to 03 in their written statement(Exh.17) have denied plaintiff's allegation in to-to. They admit about the Governments Scheme of Shiv Rasta Maharajasva Abhiyan, under which the Maharashtra State Government, have undertaken to open the Shiv roads. Under this Scheme, if the application is moved and the Shiv road is shown in the village map, in that case the Shiv Road shall be opened. Accordingly, deft. nos. 04 to 09, have moved application before Tahasildar, on dtd. 03.04.2023, bearing no. 681/2023. After taking cognizance on the application the deft. no. 02, Tahasildar, on dtd. 12.04.2023, has directed the Circle Officer, to open the Naur-Rampur Shiv Rasta, who has accordingly, on dtd. 28.04.2023, issued notices to plaintiff and defendants, for remaining present at the spot on dtd. 12.05.2023, when the Shiv Rasta, shall be opened. Having being intimated by the notice, defendants allege that plaintiff has filed the present suit.

17. Defendants contend that factually the Shiv Rasta, is shown in the village map as Shiv, which is owned by the State. Its boundaries are fixed in the village map itself, due to which its not required to be measured. Therefore, whenever the Office of Deft. no. 03, Land Records, have shown the signs of Shiv Rasta at the spot, accordingly, based on the signs, the Shiv Rasta shall be opened. Having the record, said Scheme has been implemented by the State. Having the ascertained boundaries of the Shiv Rasta, which has been previously fixed by the deft. no. 03, Land Record Office, the notices were issued by the Office of Circle Officer.

18. Defendants contend that if plaintiff has not encroached on

the Shiv Rasta, there is no need for him to have the apprehension. Having the apprehension and filing the suit infers that plaintiff has encroached the Shiv Rasta. Defendants contend that plaintiff is not legally entitled to file the present suit.

19. As per defendants previously, present plaintiff has moved suit bearing R. C. S. No. 46/2023, against present defendant nos. 01 to 03, and one lady Nanadabai Balasaheb Shinde i.e. deft. no. 04. In said suit plaintiff has surveyed the Shiv Rasta, to extent of his suit property through the Office of deft. no. 03. After survey he has opened the Shiv Rasta. After seeking the purpose in the suit, plaintiff has withdrawn it. Factually, in said suit the notice was regarding the opening of the complete Shiv Rasta. As plaintiff has withdrawn his previous suit, which was for perpetual injunction filed against deft. no 04, with whom he has entered into the compromise, plaintiff is not legally entitled to file the present suit and same is not legally tenable.

20. When the survey was conducted by deft. no. 03, Office of Land Records, in previous suit bearing R. C. S. no. 46/2023, it has shown the Shiv Rasta, in the draft map. Based on above facts, by contending that the allowing of application would cause irreparable loss to the residents of Mauje Naur and Mauje Rampur, defendants prayed for this application to be rejected.

21. Deft. nos. 04 to 09 in their written Statement (Exh.19) have denied all of the plaintiff allegations.

22. In their factual pleading, defendants contend that Gut no. 69, Adm. 3 H. 45 Ares, Pot-kharaba 3 Ares, situated at Mauje Rampur, is owned by defendant Jijabai and Sanket. Jijabai Eknath Khemnar, has

died, having 3 Hs. of land from Gut no. 69, in her name whereas, defendant no. 09 has 45 Ares of land from Gut no. 69, in his name.

23. Gut no. 69, Adm. 5Hs. 19 Ares, situated at Mauje Rampur, is owned by deft. nos. 04, 06 and 05. They are in its possession. Deft. no. 04 possesses 2 H. 15 Ares, deft. no. 06 possesses 1H. 82 Ares whereas, deft no. 05 possesses 2 H. of land, from Gut no. 70. They admit that suit property lies in Mauje Naur. Defendants admit that in between their Gut nos. 69 and 70, and that of plaintiff's suit property lies the boundary of Mauje Rampur and Mauje Naur. Said boundary runs in North-South direction and its recorded in village map of Mauje Rampur. This Shiv goes towards northern direction and joins to the Shiv of Mauje Naur. On eastern direction of Gut no. 70, lies the Shiv Rasta whereas, on northern direction of Gut no. 70, lies Godavari River. Defendants admit that the Shiv Rasta, is owned by the State and allege that its been encroached by the plaintiff.

24. While alleging that the plaintiff has encroached on the Shiv Rasta, defendant contends about the survey of Gut no. 70, done in proceeding bearing M. R. No. 480/2008, conducted from 26.08.2008 to 29.08.2008. In said survey, the surveyor Shri. K. M. Shingade, has ascertained the boundaries of Gut no. 70, and has fixed it on 31.12.2008. During survey it revealed that plaintiff has done encroachment over the Shiv Rasta, to extent of land Adm. 8 Ares. Said Shiv Rasta is on western direction of Gut no. 70. Said encroachment has been shown by the surveyor in his map and he has further shown that on western direction of Shiv Rasta, lies the plaintiff's property. From the revealed fact it can be inferred that the plaintiff has

encroached on the Shiv Rasta, lying on eastern direction of the suit property and that to prevent the Office of deft. no. 02, from taking the possession of the encroached Shiv Rasta, said suit has been moved by the plaintiff.

25. Further, while alleging encroachment of the Shiv Rasta by plaintiff, defendants have contended about the survey of their Gut no. 69, in proceeding M. R. No. 458/2008, which was conducted by the surveyor of Land Records Office, from 26.08.2008 to 29.08.2008. In said survey it revealed that the plaintiff has done encroachment on Shiv Rasta to extent of 8 Ares portion of land whereas, the possessor of Gut no. 233, has done encroachment on Shiv Rasta to extent of 3 Ares portion of land and that it further revealed that the possessor of Gut no. 234, has done encroachment on Shiv Rasta to extent of 6 Ares portion of land. The Shiv Rasta lies on the eastern direction of Gut nos. 232, 233 and 234. As the possessors of these properties have encroached on the Shiv Rasta, to prevent the deft. no. 02, Tahasildar, from taking the possession of the encroached Shiv Rasta, plaintiff has filed the suit.

26. Defendants admit, defendant Offices, contention of plaintiff's previous suit bearing R. C. S. No. 46/2023, and that of the compromise therein between the plaintiff and defendant Nandabai Balasaheb Shinde, and that of its withdrawal. They admit that in said suit and compromise therein, the Shiv Rasta was shown on the eastern direction of Gut nos. 233 and 232, reflecting plaintiff's falsity in the suit.

27. Defendants admit about the order of the Tahasildar, dtd.

12.04.2023, and that of the process conducted by the deft. no. 02 Tahasildar Office, and that by his subordinate Circle Officer, Undirgaon, by issuing notice to concern parties for opening the Shiv Rasta, lying in between Gut nos. 69 and 70, and that Gut nos. 232, 233 and 234, under the Scheme. They submit that this is a legal process conducted by the Office and the order made by the Office, is passed after due verification of the record maintained by the Grampanchayat and Land Records Office. Defendant re-utters defendant Offices, contentions that if the interim application is allowed, it would cause hardship, not only to the defendants but, to the residents of Mauje Naur and Mauje Rampur.

28. As per defendants, on 24.10.2018, the surveyor of the Deputy Superintendent of Land Records Office, have drafted one panchanama in presence of deft. no. 06, deft. no. 04, Yogesh Shivaji Raut, Sunanda Ananda Sasane, Panchas Digambar Kacharu Shinde, Prabhakar Popat Bahdange, Balasaheb Pandurang Shinde and Gaon kamgar talathi, Rampur. Said panchanama was signed by Panchas and deft. nos. 06 and 01. In said panchanama the boundaries of Gut nos. 69, 70, 232, 233, 234 and that of the Shiv Rasta, were ascertained and fixed. The boundary of the Shiv is fixed.

29. Plaintiff is having the knowledge of the panchanma dtd. 24.10.2018, and also the fixing of the boundary of the Shiv. Despite of having the knowledge of the panchanma and the fixation of the boundary of the Shiv, by suppressing these facts, plaintiff has brought up the suit, averring about the overlapping of the maps of the landed properties, which was subsequently verified and reviewed by the Office

of Deputy Superintendent of Land Records and its surveyor, resulting into the fixation of Mauje Rampur-Naur Shiv.

30. By contending that plaintiff has not come with the clean hands and that, as the Shiv Rasta has been encroached by the plaintiff and others, if the application is allowed and the deft. no. 02 Office, is restrained from implementing the order passed in Rasta Case No. 681/2023, then it would cause great inconvenience and loss to the residents of Mauje Naur and Mauje Rampur, including the defendants. Accordingly, defendants pray for rejection of the application.

31. In view of above pleadings following points are for my determination, towards which in view of the documents and arguments laid by Lrnd. Advocates for plaintiff and contesting defendants, I have recorded my findings with reasons as follows :-

Sr.No.	Points	Findings
1.	Whether plaintiff has made out the prima-facie case?	In negation
2.	Whether the balance of convenience tilts in favour of plaintiff?	In negation
3.	Whether plaintiff would suffer irreparable loss if, injunction is not granted in his favour?	In negation
4.	What order ?	As per final order.

REASONS

32. Plaintiff while substantiating his claim for interim injunction, has with list(Exh.03), relied on 7/12 extract of the suit property, the true copy of the petition filed by deft. nos. 04 to 09 in road proceeding no. 681/2023, the true copy of the order given to the

Circle Officer, Undirgaon, by the Tahasildar, the notice issued by the Circle Officer, Undirgaon, the xerox copy of the map drafted in proceeding bearing M. R. No. 458/2008, the xerox copy of the statement of deft. no. 06 recorded by the surveyor, the true copy of the decision passed by the Sub Divisional Officer, Shrirampur, in R. T. S. Appeal No. 72/2010, the true copy of the map drafted in proceeding bearing M. R. No. 719/2018, the xerox copy of the letter given by the surveyor V. S. Thakare, of the Office of Deputy Superintendent of Land Records, Shrirampur, the true copy of the road proceeding no. 139/2019, the office copy of one letter moved to Deputy Sub-Engineer of Public Works Department, the information about the road given by Public Works Department, Shrirampur.

33. Against plaintiff's claim of interim injunction, with list (Exh.22) deft. nos. 04 to 09, have relied upon the xerox copy of the statement/panchanama dtd. 24.10.2018, the xerox copies of survey map drafted in proceeding bearing M. R. No. 458/2008.

34 With list(Exh.23) deft. nos. 01 to 03, have relied upon the xerox copy of the compromise pursis between plaintiff and deft. no. 04, in suit bearing R. C. S. No. 46/2023, annexed with the map, the village map of Mauje Rampur.

35. With list(Exh.26) deft. nos. 01 to 03, have relied on the original copy of the map dtd. 24.06.2022, showing the boundaries of Shiv, drafted in proceeding bearing M. R. No. 932/2022

36. In view of the documents and arguments laid by the learned advocates, in order to avoid repetition of facts and its discussion, all points for determination are discussed collectively.

As to Point Nos. 01 to 04 :-

37. Plaintiff avers that the owners from Gut nos. 67 to 70, have moved applications for the survey of their respective landed properties before the Office of deft. no. 03 Land Records, towards which proceeding bearing M. R. Nos. 449/2008, 448/2008, 458/2008 and 480/2008, were initiated and the joint survey of the properties was conducted by the surveyor of the Office, from 26.08.2008 to 29.09.2008, wherein it revealed that there was some encroachment in the landed property bearing Gut nos. 69 and 70, against which one proceeding bearing R. T. S. Appeal No. 72/2010, was initiated by the owners, for removal of the encroachment, which, on count of objection raised by deft. no. 06, before the Office of Land Records, regarding survey in proceeding M. R. Nos. 458/2008 and 480/2008, was disposed off.

38. Plaintiff asserts that on eastern direction of his suit property and that on western direction of defendants Gut nos.69 and 70, lies one Shiv which is the Shiv of Mauje Rampur and Mauje Naur. The Shiv is between the landed properties of plaintiff and defendant nos. 04 to 09. Plaintiff's suit property lies in Mauje Naur whereas, defendants landed properties lie in Mauje Rampur. As per plaintiff when the boundaries of the Shiv was to be ascertained and fixed, for which the survey was conducted by the deft. no. 03, Office of Land Records, due to overlapping of the original maps of Gut no. 70, situated at Mauje Rampur and Gut no. 232, situated at Mauje Naur, the boundaries of the Shiv could not ascertained and fixed. Despite of this fact, the deft. no. 02, Tahasildar, in deft. nos. 04 to 09's application

bearing Shiv Rasta Case No. 681/2023, has ordered the Circle Officer, Undirgaon, to open the Shiv Rasta, under Maharajsva Abhiyan Scheme. Having apprehension of loosing the portion of land from the suit property while execution of the order, plaintiff has filed the suit with interim application against defendants restraining them from executing the order.

39. Against these alleged averments contesting deft. nos. 01 to 09, in their respective written statement cum say (Exhs. 17 and 19), have denied plaintiff's allegations and have contended that plaintiff has not come before the court with clean hands while seeking equitable relief. They allege that plaintiff has encroached on the Shiv Rasta lying between the respective properties which is a Rampur-Naur Shiv, owned by the State. On count of the encroachment, vide order in Shiv Rasta Case No. 681/2023, the directions were given by deft. no. 02, to his Circle Officer, Undirgaon, that the Shiv Rasta be opened.

40. The defendants contend about plaintiffs previous suit bearing R. C. S. No. 46/2023, against present defendant nos. 01 to 03, and one deft. no. 04, wherein plaintiff and deft. no. 04, have entered into one compromise and that to extent of the area of the suit property, plaintiff has conducted the survey of the Shiv Road, through deft. no. 03, Office of Land Records, and opened the same, despite of having the knowledge of the fact that the notice issued by the Revenue Office, was regarding the whole Shiv Rasta.

41. Deft. nos. 04 to 09 in their written statement (Exh. 19) have specifically contended that in proceeding bearing M. R. No. 480/2008 and 458/2008, the surveyor has discovered the

encroachment. During the survey of Gut no. 70, in M. R. No. 480/2008, it was revealed that plaintiff has encroached on the Shiv Rasta to extent of 8 Ares of its land. Further, during the survey of Gut no. 69, in M. R. no. 458/2008, it revealed that the plaintiff has encroached on the Shiv Rasta, to extent of 8 Ares of its land whereas, the possessor of Gut no. 233, has encroached 3 Ares portion of land of the Shiv Rasta, and that the possessor of Gut no. 234, has encroached 6 Ares portion of land of the Shiv Rasta.

42. While contending against the plaintiff's averment of overlapping of the maps of Gut nos. 70 and 232, deft. nos. 04 to 09, contend that after verification of the record with its Office, the deft. no. 03's surveyor has ascertained and fixed the boundary of Rampur-Naur Shiv and have accordingly, drafted one panchanama on dtd. 24.10.2018. Contesting defendants assert that plaintiff has not come before the Court with clean hands and have suppressed the material facts, which they have contended.

43. As both plaintiff and defendants have pleaded about the measurement proceedings of the year 2008, and to be more specific proceeding bearing M. R. Nos. 458/2008 and 480/2008, it would be fruitful to peruse the maps drafted by the surveyor in the said proceedings.

44. Plaintiff has brought the map drafted in M. R. No. 458/2008, on record with list(Exh.03). This map has been prepared after the survey conducted in between 26.08.2008 and 29.08.2008. Based on which the boundaries were fixed on 31.12.2008. In said survey it has been observed by the surveyor that the possessor of suit

property situated at Mauje Naur i.e. the plaintiff, has encroached on the land Adm. 8 Ares, of the Naur-Rampur Shiv.

45. Deft nos. 04 to 09, with list(Exh.22) have brought the map drafted in proceeding bearing M. R. No. 480/2008, which has been drafted after the survey conducted from 26.08.2008 to 29.08.2008, on the basis of which the boundaries were fixed on 31.12.2008. In said map it was also observed by the surveyor that the possessor of suit Gut no. 232, i.e. the plaintiff, has encroached on land Adm. 8 Ares of the Naur-Rampur Shiv and not only he has encroached the Shiv, he has also encroached the land of deft. nos. 04 to 09, bearing Gut no. 70, to extent of 7 Ares.

46. Though plaintiff has averred that the proceeding bearing M. R. Nos. 458/2008 and 480/2008, were challenged by deft. no. 06 causing the dismissal of R. T. S. Appeal No. 72/2010, these maps are relied upon by present deft. nos. 04 to 09, which include deft. no. 06. Irrespective of averred objection, raised by deft. no. 06, in present suit he being one of the defendant contesting the suit with other defendants, relying upon the maps, which are also relied upon by the plaintiff, nowhere averring that he has challenged the proceeding and the maps, revealing certain facts adverse to his interest, these maps at this initial stage of the suit, being unchallenged by the plaintiff and deft. no. 06, could be relied upon.

47. From these maps it prima facie appears that since year 2008, plaintiff has encroached on the Shiv of Mauje Naur and Mauje Rampur, and not only he has encroached on the Shiv, he has encroached on deft nos. 04 to 09's, Gut no. 70, situated at Mauje

Rampur.

48. Along with these maps, the map brought on record by the defendant Offices, appear to be relevant. This map is drafted in proceeding bearing M. R. Nos. 931/2022 and 932/2022, on count of application moved by one Nandabai Balasaheb Shinde. This map is drafted after the survey of Gut nos. 232 and 233, of Mauje Naur and Gut nos. 69 and 70, of Mauje Rampur, conducted on 24.06.2022. Based on this map, the boundaries were fixed on 30.11.2022.

49. In said survey it was re-observed by the surveyor that the Naur-Rampur Shiv, was encroached by plaintiff to extent of 9 Ares portion of its land. Further, the possessor of Gut no. 233, i.e. the applicant in the said proceeding, has encroached on the Naur-Rampur Shiv, to extent 3 Ares portion of its land. Not only the plaintiff has encroached on the Naur-Rampur Shiv, he has also encroached on deft. nos. 04 to 09's Gut no. 69, to extent of 1.50 Ares portion of its land, and that on Gut no. 70, to extent of 12 Ares portion of its land. Further, it has also been observed that the applicant Nandabai, has encroached on deft. nos. 04 to 09's, Gut no. 69, to extent of 0.50 sq. mtrs., portion of its land.

50. Though plaintiff has not averred about his previous suit bearing R. C. S. No. 46/2023, same has been contended about by the contesting deft. nos. 01 to 09. Its copy has been brought on record deft. nos. 01 to 03 with list(Exh. 24). They have filed the copy of the compromise pursis filed by present plaintiff and deft. no. 04 therein, along with the map reflecting the existing circumstances at the disputed sight.

51. On perusal of this pursis, it appears that deft. no. 04 is the owner of Gut no. 233. In this regard defendants in their written statement have contended that said deft. no. 04 is the Nandabai Balasaheb Shinde. In view of the map filed on record by defendant Offices, drafted in M. R. No. 932/2022, said Nandabai, the deft. no. 04, in the suit bearing R. C. S. No. 46/2023, is the applicant.

52. Having the knowledge of the suit bearing R. C. S. No. 46/2023, initiated at the instance of plaintiff wherein, he has entered into the compromise with deft. no. 04, the applicant of M. R. No. 932/2022, plaintiff was bound to aver about this fact but, appears to have abstained, on count of the fact of his encroachment on the Naur-Rampur Shiv, and that on the deft. no. 04 to 09's landed properties. From the map in M. R. No. 932/2022, both present plaintiff and deft. no. 04 of suit bearing R. C. S. No. 46/2023, have respectively encroached on the Naur-Rampur Shiv, and have further encroached on defendants Gut nos. 69 and 70.

53. Having the knowledge of the survey in M. R. No. 932/2022, and that of the encroachment shown therein by plaintiff and deft. no. 04 Nandabai, the possibility of filing the suit bearing R. C. S. No. 46/2023, in collusion, by them against present deft. nos. 01 to 03, could not be ruled out.

54. In view of the map in M. R. No. 932/2022, on perusal of the compromise pursis entered into between the present plaintiff and defendant Nandabai, in suit bearing R. C. S. No. 46/2023, they both have agreed about one existing Shiv Rasta, running in North South direction, going towards the River, on which deft. no. 04, has

relinquished her interest. While relinquishing her interest over the Shiv Rasta, she has accepted in the pursis that she is having one alternative access way towards her Gut no. 233, through plaintiff's Gut no. 232, which runs on its southern and western boundary, having width of 15 ft., and length of 300 ft., which is in L shape. On count of their mutual arrangement towards access way, deft. no. 04 has relinquished her interest over the Shiv Rasta.

55. From this pursis it can be inferred that both the parties admit about the existence of Naur-Rampur Shiv. As this compromise pursis is annexed with one map agreed by both the compromising parties, same would be relevant. The Shiv Rasta shown in the map lies on western direction of defendants Gut no. 69, situated in Mauje Rampur. As the boundaries of Mauje Rampur and Naur, is in the form of Shiv Rasta, and as admitted by both present plaintiff and deft. nos. 04 to 09, is passing in between suit property, lying in Mauje Naur and defendants Gut no. 70, lying in Mauje Rampur, this Shiv Rasta has to be continuing through these landed properties and ending at the Godavari River, which is on the northern direction of the plaintiff's suit property and defendants Gut no. 70. Same appears from the village map of Mauje Rampur, which shows the Shiv Rasta of Naur and Rampur, lying on western direction of defendants Gut nos. 69 and 70, having Godavari River, on northern direction of Gut No. 70.

56. But, the map with the compromise pursis nowhere shows that the Shiv is running between the respective properties of plaintiff and defendants, which in view of long standing maps of year 2008, drafted in M. R. Nos. 458/2008 and 480/2008, and that in view of

recent drafted map in M. R. No. 932/2022, is a prima facie encroachment of the Shiv of the Naur-Rampur, lying between suit property and defendants Gut no. 70, by the plaintiff.

57. Plaintiff has very conveniently entered into the compromise with deft. no. 04 Nandabai, in suit R. C. S. No. 46/2023, by accepting the existence of Shiv running in between defendants Gut no. 69 and Nandabai's Gut no. 233, and by interchanging the portion of lands from their respective Gut nos. 232 and 233, towards the access way for Nandabai, they have entered into compromise wherein, Nandabai has relinquished her right of access over the Shiv Rasta, which has been already encroached by her and plaintiff, who has not only encroached on the Shiv Rasta, but have also encroached on 7 Ares portion of defendants Gut no. 70.

58. The above relevant documents filed on record by contesting defendants prima facie unfold plaintiff's long standing encroachment over the Shiv Rasta, which previously ran in between his suit property and defendants Gut no. 70.

59. While filing the suit with the present interim application, plaintiff has strongly asserted about the overlapping of the original map of Gut no. 232 and Gut no. 70, due to which the boundaries of Shiv Rasta could not be ascertained and fixed. But, this was the situation occurred in year 2018, when the survey was conducted by Shri. V. S. Thakare, in proceeding bearing M. R. no. 719/2018.

60. But, thereafter, there was one survey conducted by deft. no. 03 Office, in M. R. no. 932/2022, which was initiated at the instance of applicant Nandabai, who was a compromising deft. no. 04 with

plaintiff, in his suit bearing R. C. S. No. 46/2023 wherein, they both have entered into a convenient compromise wherein, they have partly admitted the existence of Shiv Rasta and have tried to show that no Shiv Rasta existence between plaintiff's Gut no. 232, and defendants Gut no. 70, which are respectively lying in Mauje Naur and Mauje Rampur, having its Shiv in between the respective properties.

61. Plaintiff though, avers about the Naur-Rampur Shiv, running between his suit property and defendants Gut no. 70, he abstains to plead about the fact of encroachment of over the Shiv and have smartly averred that the boundaries of the Shiv, were not able to be ascertained and fixed due to the overlapping of the maps maintained by the deft. no. 03, Office.

62. In view of documents with maps brought on record by the contesting defendants, which are discussed above, its the plaintiff who has since long encroached on the existing and existed Naur-Rampur Shiv Rasta, and has further encroached on defendants landed property bearing Gut no. 70, situated at Mauje Rampur.

63. It was expected from the plaintiff that while claiming equitable relief of interim injunction against defendants, he would have come with clean hands before the Court without suppressing relevant and material facts, which defendants have, prima-facie unfolding plaintiff's default of long standing encroachment over the Shiv Rasta.

64. Said act of encroachment by plaintiff has not only caused inconvenience to the deft. nos. 04 to 09 but, it has also caused inconvenience to deft. nos. 01 to 03 Offices, who are bound to implement the State Government Schemes like Shiv Rasta Maharajsva

Abhiyan, which is towards removal of encroachment and opening of the Shiv Roads, which would be useful for the residents of the respective villages and to be more specific to the residents of Mauje Rampur and Mauje Naur, whose Shiv Rasta, has been encroached by plaintiff and very conveniently suppressed by him in the present suit.

65. As the Government Scheme is for the general public and as the encroachment of Shiv Rasta has caused and is causing inconvenience to deft. nos. 04 to 09 in particular, and all defendants in general, towards implementation of the Government Scheme launched in public interest, it would not be justifiable to restrain defendants from executing the order passed in Shiv Rasta Proceeding Case No. 681/2023, which prima facie appears to be justifiable, in view of above discussed documents on record.

66. On count of suppression of facts, which defendants succeed to unfold, plaintiff fails to unfold this prima facie case, tilting balance of convenience in his favour, failing him to unfold irreparable loss, which he apprehends. Therefore, by recording my findings on point nos. 01 to 03 in negation, in view of suppression of facts by plaintiff, towards point no. 04, I pass following order.

ORDER

01. The application is rejected.
02. No order as to Costs.

Date: 21/07/2023

(Vinay B Kamble)
Jt. Civil Judge Sr. Division,
Shrirampur.