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Decided on : 18.08.2022  
Duration : 05Y.11M.16D.

**IN THE COURT OF CIVIL JUDGE (J.D.), BARSHITAKLI.**  
(Presided over by A.B. Katte)

**Regular Civil Suit No.70/2016**

**Exh.29**

**Dattatray Narayan Kale**

Age :- 67 years, Occ :- Agriculturist,  
R/o. Chichkhed, Tal :- Barshitakali  
Dist :- Akola.

... **PLAINTIFF**

- **VERSUS** -

**Pradeep Motiram Kale**

Age :- 39 years, Occ :- Agriculturist,  
R/o. Chichkhed, Tal :- Barshitakali  
Dist :- Akola.

... **DEFENDANT**

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**CLAIM** : **SUIT FOR REMOVAL OF ENCROACHMENT,  
POSSESSION AND MESNE PROFIT.**  
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**Appearance :** Shri Ashique Ali Adv. for the plaintiff.  
Shri. Ingale V. S. Adv. for the defendant.  
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**JUDGMENT**

(Delivered on 18<sup>th</sup> Aug 2022)

The plaintiff has filed present suit for the removal of encroachment, possession and recovery of meanse profit.

02. It is the case of the plaintiff that the plaintiff is owner of Survey No. 160 admeasuring 5H 37R bounded as towards East Agri Land of Amol Bhang and Shankar Kale, towards West Government Road, towards North Gat No. 159 (Agri Land of Defendant), and towards South Ramkrushna Kale. (hereinafter for sake of brevity referred as "suit land")

03. The plaintiff have further contended that he has applied to Dy.S.L.R. Barshitakali for the measurement of the suit land. The Dy.S.L.R. Barshitakali has issued notice to all adjacent owners and defendant. On 04/06/2016 the Dy.S.L.R. has measured the suit land. At the time of measurement the adjacent owners and defendant were present. The Dy.S.L.R. has fixed the boundry mark. In said measurement it transpired that on northen side of suit land the defendant has enchroached upon 29R land. The said encroachment of 29R land is marked as ABCDEFG. The Dy.S.L.R. has issued "C" copy of the measurement map to the plaintiff. Therefore the plaintiff has demanded possession of the enchroached area from the defendant. The defendant failed to hand over the possession to the plaintiff. Hence the plaintiff has sent notice to the defendant by R. P. A. D. demanding possession of enchroached area. The defendant failed to hand over the possession. Hence plaintiff has filed present suit for removal of enchroachment and possession of said enchroached area and meanse profit.

04. The defendant contested the suit by filling written statement (Exh.12). They have denied all the material contentions raised by the plaintiff.

05. The defendant has contended that the measurement is carried out is not as per law and same is not carried out by following due process of the law. The measurement is not done as per mandatory provisions of law and rules. The plaintiff has carried out measurement in collusion with the T.I.L.R. Hence same can not be considered.

06. It is further contended by the defendant that he is owner of the Gat No. 159. He has inherited the Gat No. 159. The plaintiff is his cosine brother having same ancestor. The plaintiff is owner of part of Gat No. 160. The forefather of plaintiff and defendant cultivated the Gat No. 159 and 160 without fixing any boundry marks. There is no boundry mark fixed at any point of time. Therefore question of encroachment does not exists.

07. It is further contended by the defendant that the plaintiff is not only owner of Gat No. 160. There are other 3 co-sharer in Gat No. 160 i.e plaintiff, Nilkanth Kale and Vijay Kale. The Nilkanth Kale and Vijay Kale have share of 2H land each. The plaintiff is owner of 1H37R land. The total area of the Gat No. 160 id 5H 37R. The plaintiff possess less

area than Nilkanth and Vijay. Hence he is trying to grab the property owned by the defendant. Therefore he joined hands with the T.I.L.R. and shown false measurement. He prepared false and fabricated documents and measurement sheet. The plaintiff has suppressed material facts from the Court. He is not come with the clean hands.

08. It is further contended by the defendant that the plaintiff has not pleaded the provision as per which he has valued the suit property. The plaintiff has not complied as per Order VII Rule 1(i) of the Code Of Civil Procedure. Hence suit is liable to be rejected. The plaint is not verified as per the Order VI R 15 of the Code of Civil Procedure. Hence the suit is liable to be dismissed.

09. It is further contended by the defendant that the suit is filed without cause of action. Hence he prayed for dismissal of the suit.

10. Considering rival pleadings and submissions of the parties, the following issues were framed. I record my findings alongwith reasons are as under :

| <b>Sr.<br/>No.</b> | <b>ISSUES</b>                                                                                                                          | <b>FINDINGS</b> |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1.                 | Whether the plaintiff's prove that the defendant has committed the encroachment to the extent of 29R land over suit land of plaintiff? | In Negative.    |

|    |                                                                                    |                |
|----|------------------------------------------------------------------------------------|----------------|
| 2. | Whether the plaintiff is entitle to get possession of encroched portion as prayed? | In Negative.   |
| 3. | Whether plaintiff is entitle for mense profit ?                                    | In Negative.   |
| 4. | What order and decree?                                                             | Suit Dismissed |

**:- REASONS :-**

11. The plaintiff has examined himself as P.W.1 at Exh.15. He also examined P.W.2 T.I.L.R. Sanjay (Exh.26). The plaintiff relied on Measurement Map(Exh.27). Than he closed his evidence by pursis (Exh. 28)

12. The defendant has failed to appear and cross examine the P.W.1 Dattatray and P.W.2 Sanjay. Hence the matter is proceeded without cross examination of the plaintiff's witnesses by defendant. The defendant further failed to lead his evidence. Hence suit is proceeded without evidence of the defendant.

**AS TO ISSUES NO.1, 2 AND 3 :-**

13. All these issues are interlinked with each other. Hence to avoid repetition they are discussed together.

14. The P.W.1 Dattatray (Exh. 15) deposed that he is owner and possessor of suit property bearing Gat No. 160 admeasuring 5H 37R. He has suspicious that he is a

possession of lesser area. He applied to Dy.S.L.R. Barshitakali for measurement of his land. The Dy.S.L.R. send notices to adjacent owners and defendant. The Dy.S.L.R. measured suit land on 04-06-2016 in presence of defendant, panchas and adjacent owner. He prepared panchanama. He prepared Measurement Map bearing M.R.No. 246. The Dy.S.L.R. has fixed boundary mark. In said measurement it transpire that defendant (owner of Gat no. 159) has encroached on 29R land of plaintiff on northern side. The said encroachment is shown as ABCDEFG in map. The 29R land of Gat no. 160 is in possession of Gat no. 159. The defendant, panchas and adjacent owner's has signed the Map. The C copy of Map is filed on record. He has send notice by RPAD to defendant on 27-7-2016 claiming the possession of encroched area. The defendant has not handed over the 29R encroached area to him.

15. The P.W. 2 Sanjay (Exh. 26) has deposed that the plaintiff has filed application for fixing boundaries of his land. The plaintiff has deposited necessary fees. He has send notices to defendant and person mentioned in application. He measured the suit land on 04-06-2016 by plane table method. In measurement it transpire that 29R land of Gat no. 160 is in possession of owner of Gat no. 149. He prepared the map. He shown encroachment in a map as ABCDEFG. He has filed C copy of map. The contents in said map is true and correct. He proved the map (Exh. 27).

16. The defendant failed to cross examine the P.W.1 Dattatray and P.W.2 Sanjay. Hence the matter is proceeded without cross examination of the plaintiff's witnesses by defendant. The defendant further failed to lead his evidence. Hence suit is proceeded without evidence of the defendant.

17. The defendant came with the defence in his pleadings that the measurement carried out is not as per law and the rules. The measurement is not carried out by following due proceed of law. Hence the measurement is illegal and not relieble.

18. It is settle law that to find out the encroachment the joint measurement has to be carried out of the disputed lands. In present matter the plaintiff has applied for the measurement of suit land only. The Dy. S.L.R. has measured the suit land that is Gat No. 160. The defendant is owner of Gat No. 159. The Dy. S.L.R. has not jointly measured the Gat No. 160 and 159. The Dy. S.L.R. has traced the 29R encroachment by measuring only Gat No. 160 (suit land). Both the parties failed to apply for joint measurment of Gat No. 159 and 160 to trace out the exact area of encroachment. The parties has not applied for Court commissioner to make local investigation for elucidating the exact area of encroachment as per order 26 Rule 9 of Code of Civil Procedure.

19. The plaintiff have relied on the Map (Exh.27). As per said Map, the measurement of only Gat No. 160 was carried out. The said Gat No. 160 (suit land) is owned by the plaintiff. The land of the defendant i.e Fat No. 159 is not measured for evaluating the encroched area. As per this Map the plaintiff have claimed 29R encroachment from Gat No.159. The said encroachment is claimed on the basis of measurement of Gat No. 160 only. The land of defendants viz Gat No. 159 is not measured along with Gat No.160. Hence the encroched area evaluated is not as per the settle law. Hence the Map (Exh.27) cannot be relied for proving the encroachment.

20. As discuss above the parties have failed to brought on record the Joint Measurement Map. The Map (Exh.27) can not be relied to prove the encroachment made by the defendant on the land of the plaintiff. In such situation the oral evidence and other documentary leaded by the plaintiff is not sufficient to prove the alleged encroachment on 29R land. Hence I hold issue No.1 in negative. Accordingly, I conclude that the palintiff's are not entitle to get the possession of enchroached portion. Hence I hold issue No.2 in negative. As plaintiff failed to prove enchroachment hence he is not entitle for mense profit. Hence I hold issue No. 3 in negative.

**AS TO ISSUE NO. 4 :-**

21. As I answer issue No. 1 to No. 3 in negative in such situation I conclude that the plaintiff failed to prove the suit claim. Hence in answer to issue No. 4 I pass following order.

**ORDER**

1. The suit stands dismissed.
2. No order as to cost.

Place : Barshitakli  
Date : 18<sup>th</sup> Aug, 2022

( A. B. Katte )  
Civil Judge Junior Division,  
Barshitakli.