

**ORDER BELOW EXH-5 IN RCS No. 266/2016**

(Laxmibai Deshmukh V/s Indermohan Avasthi )

This is an application filed by plaintiff under Order XXXIX Rules 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as “the Code” for the sake of brevity] seeking for temporary injunction.

2] Perused the application and say. Heard both sides at considerable length.

3] The suit is for perpetual injunction. Through this application the plaintiff prayed for restraining the defendant from causing any sort of obstruction to her peaceful possession over 2H 10R land out of 3H 61R with potkharab 11R of field gut no. 175 situated at mouje Bhabhulgaon, Tq. Paithan, Dist. Aurangabad. The four boundaries of plaintiff's 2H 10R land are toward east : land of defendant from same gut no. 175, toward west : land of one Kureshi and Mankape, toward south : land of Shashikant Balasaheb Deshmukh the son of plaintiff, toward north : Kesapuri road (The property described above would hereinafter be referred to as the “suit field ” for the sake of brevity).

4] According to plaintiff she is owner and possessor of suit field. Same has been purchased by her from one Shaikh Haider Shaikh Amin vide registered sale deed bearing no. 1278/98 dtd. 21/4/1998. After purchasing the suit field vide mutation entry no. 684 same has been recorded in the name of plaintiff. Towards eastern sides of suit field there is agriculture land belongs to defendant. Towards eastern sides of defendant's land there is Bhabhulgaon Kesapuri road. The said Bhabhulgaon road goes through the area of land field gut no. 175.

However the defendant is trying to show his possession by excluding the land included in Bhabhulgaon Kesapuri road. As per measurement dtd. 21/4/2001 plaintiff has got ascertained the four boundaries of his land field area 2H 10R land. However the defendant with ill-motive and to grab the land belongs to plaintiff is trying to encroach over the suit field. In the year 2014 the defendant has wrongly got measured his land. The defendant has got prepared false measurement map. The defendant with the help of said forged map is trying to encroach over the suit field. The plaintiff has challenged said measurement before appellate authority. Defendant is trying to convert his land for non- agriculture use. Defendant wants to sanction lay-out plot in his agriculture land. Defendant with the help of false measurement is trying to encroach over the suit field. On 13/12/2016 defendant threatened to encroach the suit field. Hence plaintiff prayed for restraining the defendant from causing any sort of obstruction to his peaceful possession over the suit field.

5] On the other hand defendant vide his written statement [Exh.15] has resisted the suit claim. It has been specifically denied by the defendant that the plaintiff is in cultivating possession of 2H 10R land as averred. It has been contended by defendant that his predecessor in title namely Yogesh Shantaram Bhogle and Shriprasad Shantaram Bhogle have purchased the eastern sides land from field gut no. 175. According to defendant while purchasing the land by Bhogle brothers they purchased the same by excluding the land allotted to public road. Thus according to defendant after excluding land allotted to northern and eastern sides road their predecessor in title namely Bhogle brothers have purchased the land from original owner namely Sahebrao Tukaram Gidhane. Further according to defendant after purchasing the land Bhogle brothers have got measured the same as per measurement dtd. 28/7/1997.

6] The defendant has purchased 1H 62R land from Bhogle brothers, it has been purchased as per registered sale deed dtd. 27/4/2001. According to defendant after purchasing the land he has also got measured the same twicely i.e. on 28/1/2006 and 7/11/2014. According to defendant after alienation of 1H 62R land the original owner namely Raosaheb Tukaram Gidhane was not in cultivating possession of 2H 10R land purchased by plaintiff. It is the contention of defendant that even though the sale deed executed in the name of plaintiff and her predecessor in title namely Shaikh Haider Sk. Amin is for 2H 10R land however neither plaintiff nor her predecessor in title received the possession of 2H 10R land. According to defendant he is in cultivating possession of land as was cultivated by his predecessor in title i.e. Bhogle brothers. According to defendant he never changed his cultivation, there is big boundary (Bandh) between his land and that of the plaintiff and therefore no question arise for commission of encroachment as alleged by plaintiff. Thus defendant prayed for rejection of the application.

7] On the basis of facts and documentary material placed on record following points arise for my determination to which I have recorded my findings for the reasons as follows :

| <u>POINTS</u>   | <u>FINDINGS</u>      |
|---|----------------------|
| 1) Whether prima-facie case lies in favour of the plaintiff ?       | ... In the negative. |
| 2) Whether balance of convenience lies in favour of the plaintiff ? | ... In the negative. |

3) Whether irreparable injury would occasion to the plaintiff, if temporary injunction not granted ?

... In the negative.

4) What Order ?

... The application is rejected.

### REASONS

#### AS TO POINT NOS. 1 TO 4 :

8] The above points are interlinked to each other, hence are taken for discussion and determination at once.

9] In order to entitle for injunction it is incumbent upon the plaintiff to show that she has prima-facie case and further also to show that balance of convenience lies in grant of temporary injunction application. Again the plaintiff is duty bound to show that if the temporary injunction is not granted then irreparable injury would occasion to her. Prima-facie case means a case that there is serious question to be tried in the suit and that on the facts before the Court there is possibility of the plaintiff being entitled to the relief asked by them. Likewise, it must be shown that the Courts interference is necessary to protect the plaintiffs from that species of injury which the Court feels irreparable.

10] Considering the ingredients necessary for granting the relief of temporary injunction, if one goes through the pleading as well as documentary material supplied by both plaintiff and defendant, it is not disputed to both sides that the whole field gut no. 175 consist of 3H 72 R land. It is not disputed that out of 3H 72R, 11R land is potkharab. Further it is not disputed to both plaintiff and defendant that out of 3H

72R land 2H 10R is recorded in the name of plaintiff and 1H 62R land is recorded in the name of defendant. Further it is not disputed that one Raosaheb Tukaram Gidhane r/o Chitegaon, Tq. Paithan, Dist. Aurangabad was original owner of whole gut no. 175 area 3H 72R land. It is not disputed that said Raosaheb Tukaram Gidhane has sold out eastern sides 0H 81R land each to one Yogesh Shantaram Bhogle on 15/5/97 and to one Shriprasad Shantaram Bhogle on 6/6/97. Likewise it is not disputed that thereafter original owner Raosaheb Tukaram Gidhane sold out remaining land of field gut no. 175 to one Shaikh Haider s/o Shaik Amin in the year 1998. It is not disputed that present plaintiff has purchased her land from Shaikh Haider Shaikh Amin vide sale deed dtd. 19/4/1998 and present defendant has purchased his land from Bhogle brothers vide sale deed dtd. 27/4/2001.

11] The material controversy existed between plaintiff and defendant is about actual possession over land field gut no. 175. According to plaintiff the defendant is trying to encroach over their 2H 10R land. On other hand according to defendant even though the plaintiff and her predecessor in title purchased 2H 10R land however after alienating 1H 62R land to Bhogle brothers the original owner namely Sahebrao Tukaram Gidhane was not in actual possession of 2H 10R land. According to defendant even though the sale deed executed in the name of predecessor in title of plaintiff namely Shaikh Haider Shaikh Amin was for 2H 10R land however original owner never delivered the possession of 2H 10R land to said Shaikh Haider Shaikh Amin. According to defendant as Shaikh Haider Shaikh Amin was not in actual possession of 2H 10R land and hence no question arise to deliver the possession of the same to the plaintiff.

12] During argument the learned counsel for defendant Mr. R.K. Pallod vehemently argued that itself from the registered sale deed executed in the name of Bhogle brothers and the sale deed executed in the name of defendant, it can be gathered that the Bhogle brothers have purchased the land after excluding the land allotted for the public way. Thus it is the contention of defendant that even though the public way goes through the land gut no. 175, however while purchasing the land his vendor Bhogle brothers have purchased the land adjacent to public way. During argument it has been submitted that as the original owner namely Raosaheb Tukaram Gidhane initially sold out the land adjacent to the public way and therefore it is quite clear that while alienating the land to the vendor of plaintiff i.e. to Shaikh Haider Sk. Amin, the original owner was not in possession of 2H 10R land and hence no question arises to hand over the possession of 2H 10R land to the vendor of plaintiff namely Shaikh Haider Shaikh Amin. On the other hand it has been argued on behalf of plaintiff that as per sale deed dtd.21/4/1998 she has purchased 2H 10R land and after purchasing 2H 10R land she has got measured the same as per the provisions of Section 85(2) of M.L.R. Code 1966. For proving her possession the plaintiff relied on the measurement map dtd. 22/4/2001 and has submitted that as per measurement map, it has been now quite clear that she is in cultivating possession of suit field i.e. 2H 10R land.

13] Considering the submissions and the documentary material putforth by both sides, if one goes through the sale deed executed in the name of Bhogle brothers and that of defendant, prima facie it can be gathered that initially the vendors of defendant i.e. Bhogle brothers have purchased 1H 62R the land from original owner namely Raosaheb Tukarma Gidhane and vide sale deed dtd. 27/4/2001, they sold out said

1H 62R to the defendant. Likewise on going through the sale deed dtd. 21/4/1998, it goes to show that the plaintiff has purchased her 2H 10R land from Shaikh Haider s/o Sk. Amin. Thus on going through the documents of title and the revenue record, it can be gathered that today plaintiff is legally entitle to occupy 2H 10R land and defendant is legally entitle to occupy 1H 62R land from field gut no. 175. However the real dispute existed between plaintiff and defendant is about actual possession over their respective shares. Even though both plaintiff and defendant are claiming to be in settled possession of their respective shares however boundary dispute is seems to be pending between them. Both plaintiff and defendant have supplied the copies of measurement map on record. As per measurement map dtd. 22/4/2001 plaintiff has got measured his share as per provisions of Section 85(2) of the M.L.R. Code 1966. Likewise as per measurement dtd. 26/7/1997 the predecessor in title of defendant namely Yogesh Bhogle got measured his share as per provision of Section 85(2) of the M.L.R. Code 1966.

14] Likewise on perusal of other measurement maps, it goes to show that on 28/11/2006 and 7/11/2014 the defendant also has got measured his share from field gut no. 175. Thus if one scrutinize the measurement maps supplied on record, there are in all four measurement maps relating to suit field gut no. 175. Even though both plaintiff and defendant are having their own measurement maps however same are not seen to be agreed to opposite side. In absence of agreed map it can not be said that plaintiff and defendant are in settled possession in their respective sites. Without carrying out joint measurement the dispute between plaintiff and defendant can not be resolved. Thus even though plaintiff is seems to be legally entitle to occupy the 2H 10R land and defendant is seems to be legally entitle to occupy the 1H 62 R in field

gut no. 175, however there is no prima facie material to hold their actual possession as averred.

15] Thus boundary dispute is seems to be existed between the parties and in absence of agreed map it can't be said that both plaintiff and defendant are in settled possession of their respective shares. Thus, no prima facie case is seems to be lies for grant of discretionary relief of T.I.. Prima facie follows balance of convenience. So far as irreparable loss is concern, considering the facts and circumstances of the case at hand in absence of joint measurement if T.I. granted then definitely the inconvenience would cause to both sides. Hence considering the discussion given supra I have no hesitation to hold that the plaintiff is not entitled for discretionary relief of T.I. Accordingly I answer Point Nos. 1 to 3 in the negative and in answer to point no. 4, I proceed to pass the following order.

ORDER

- (1) The application for temporary injunction is rejected.
  
- (2) Costs in cause.

Date : 01.02.2017  
Place : Paithan

Signed  
[S. K. Fokmare]  
Civil Judge (J.D.),  
Paithan

**Certificate**

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

Name of Stenographer :- **V.B. Sadashive.**

Court :- Civil Judge (J.D.) Paithan

Date :-1/2/2017

Order signed by the presiding officer on:- 1/2/2017

Order uploaded on :- 1/2/2017