

MHBI110010312021

R.C.S. No. 261/2021

(Jilani Vs. Jaitunbee)

ORDER BELOW EXHIBIT-5

1. This is the application filed under Order- 39, Rule-1 and 2 of the Code of Civil Procedure for grant of interim injunction restraining the defendants from obstructing the possession of the plaintiffs over the suit property till final decision of this suit.

2. Plaintiffs contended that, field bearing Block No. 1 admeasuring 2-H 69-R land out of it 2-H 08-R land situated at Mouza Takalgaon Tq. Georai Dist. Beed more particularly described in para No. 2 of the application was purchased by the father of plaintiff No. 1 and 2 namely Raheman Suzat Khan Pathan to the extent of 1-H 62-R land out of which western side 11-R land was sold by him. Thereafter, Raheman Khan Sujat Khan Pathan remained owner of 1-H 51-R land after the death of Raheman Khan Sujat Khan Pathan plaintiff No. 1 and 2 got it partitioned in between them. Thereafter, defendant No. 3 also purchased 57-R land in the year 1999 of Block No. 1 from Rambhau Janjire. Thus, plaintiff No. 1 to 3 became owners of 2-H 08-R land of Block No. 1. Defendants are adjacent owners of the Block No. 1 towards eastern side having Block No. 3 there is ancestral Bandh in between the field of plaintiffs and defendants having trees over it of berry, Limb and Babool. As the field of the plaintiffs is adjacent to the village they erected plots over it and therefore its valuation is increased. Hence, defendants due to their greed to grab the field of the plaintiffs have came in the field of plaintiffs on 08.02.2021 at about 4.00 p.m. and started removing the trees over the Bandh with the help of J.C.B. At that time, wife of the plaintiff No. 1 namely Sugarabai was present

there who asked the defendants not to damage the Bandh but defendants have threatened her to cause her death. Therefore, report was lodged on 09.02.2021 at police station Georai. On that day defendants removed all the trees on that Banth and started encroaching over the suit field. Defendants got measured their field through the office of land records and on the basis of false measurement are encroaching over the suit field. On 15.04.2021 defendants again with the help of tractor tried to remove the Bandh and encroach over the suit field. Hence, this suit is filed and plaintiff prayed to restrain the defendants from creating obstruction to their possession over the suit property.

3. Though the opportunity was given to the defendants they not filed their say. Hence, this application proceeded without say of defendants. However, defendants have filed their written statement at Exh. 27 and admitted the description of the suit property and existence of their field Block No. 3 adjacent to the field of plaintiffs. They also admitted measurement done by the office of land records and contended that, in that measurement 17-R land of field Block No. 3 is found in possession of the plaintiffs. They further contended that, though due to mediation by relatives defendants handed over the encroached portion of 17-R land to the defendants and now this suit is filed to encroach over the field of defendants with the help of court order.

4. Heard learned counsel for both the sides. After considering material available on record following points arise for my determination to which I have recorded my findings against them for the reasons mentioned thereunder:-

Sr. No.	Points	Findings
1.	Do plaintiffs prove that prima facie case lies in their favour ?	Affirmative...
2.	Do plaintiffs proves that balance of convenience lies in their favour ?	Affirmative...
3.	Do plaintiffs proves that they will suffer irreparable loss if the injunction prayed not granted ?	Affirmative...
4.	What order ?	As per final order

REASONS

As to Point No. 1 to 4 :-

5. Perusal of the record shows that, plaintiffs have filed on record copies of 7/12 extract which shows that, in Block No. 1, 75.50-R land is recorded in the name of Hakim Khan and 75.50-R land is recorded in the name of Jilani. 57-R land is also recorded in the name of plaintiff No. 3 Javed. Therefore, it appears that 2-H 08-R land in Block No. 1 of Mouza Takalgaon is recorded in the name of plaintiffs which is also admitted by the defendants. In Block No. 3, 81-R land is recorded in the name of defendant No. 1. Defendants also admitted that, their field Block No. 3 is adjacent to the field of plaintiffs. The defendants taken contention in their written statement at Exh. 27 that, in measurement 17-R land of their field Block No. 3 is found in possession of the plaintiffs. Hence, it appears that there is a boundary dispute in between the parties. Copy of measurement of field Block No. 3 is also filed on record which shows encroachment of 17-R land over the field Block No.3. However, the measurement map filed by the

defendants is not admitted by the plaintiffs. Therefore, if there is any encroachment made by the plaintiffs over the field Block No. 3 defendants are required to file suit for removal of encroachment and for possession of their encroached portion. They could also file counter claim in that respect. However, defendants have not filed any suit for possession of encroached portion as they claim in their written statement nor filed counter claim. Even defendants have not filed say to this application. Therefore, mere contention taken of encroachment by the plaintiffs over the field Block No. 3 cannot be considered for obstructing possession of the plaintiffs over the suit property. Therefore, I am of the view that, prima facie case lies in favour of plaintiffs and balance of convenience also lies in their favour. Without filing appropriate proceeding for possession of encroached portion defendants cannot claim any relief. In absence of such proceeding by the defendants if temporary injunction prayed is rejected the plaintiffs will definitely suffer irreparable loss. Therefore, I answer point No. 1 to 3 in affirmative and for the answer to point No. 4 proceed to pass following order.

ORDER

1. Defendants are hereby restrained from obstructing the possession of plaintiffs over the suit property either by themselves or through agents or through servants or any person on their behalf till final decision of this suit.
2. Costs in cause.

Date : 21-03-2024

(Shri. S. P. Wankhade)

C.J.J.D. AND J.M.F.C. GEORAI

I affirm that the contents of this PDF file are word to word as per original order.

Dictated on : 21/03/2024

Transcribed on : 21/03/2024

Checked & signed on : 21/03/2024

Sd/-
(V. V. Mandve)
Stenographer Grade - 3,
C.J.J.D. & J.M.F.C., Georai.