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IN THE COURT OF CIVIL JUDGE (JR.DN.), CHAMORSHI,
DISTRICT GADCHIROLI.

[Presided over by M.Z.A.A.Q. Quraishi]

Reg. Civil Suit. No. 26/2016

Exh.No.74.

1. Shri Dipak Brijobar Haldar,
Aged 48 years, occu.- Agriculturist,
2. Shri Dilip Brijobar Haldar,
Aged 35 years, occu.-Agriculturist,
R/o Chamorshi, Tq.Chamorshi,
Dist.Gadchiroli.
3. Shri Dinesh Brijobar Haldar,
Aged 32 uears. occu.-Agriculturist,
All R/o Durgapur, Tah.Chamorshi,
Dist.Gadchiroli.
4. Sau Dipi Rajen Chaudhari,
Aged 60 years, occu.-Household,
R/o Krishnagar, Tah.Chamorshi,
Dist.Gadchiroli.
5. Sau Komal Sharad Haldar,
Aged 50 years, occu.-Household,
R/o Palaspur, Tah.Chamorshi,
Dist. Gadchiroli.
6. Sau Kalpana Shankar Bala,
Aged 45 years, occu.-Household,
R/o Chittaranjanpur, Tah.Chamorshi,
Dist. Gadchiroli.

7. Sau Malti Tapan Baral,
Aged 42 years, occu.-Household,
R/o Shriniwaspur, Tah.Chamorshi,
Dist. Gadchiroli.
8. Kadam V Brijobar Haldar,
Aged 95 years, occu.-Agriculturist,
R/o Durgapur, Tah.Chamorshi,
Dist. Gadchiroli.

.. Plaintiffs

-Versus -

1. Shri Milan Dulal Mandal,
Aged 45 years, Occ.- Agriculturist,
2. Sau Sushama Milan Mandal,
Aged 40years, Occ.- Agriculturist,
Both R/o Durgapur, Tah. Chamorshi,
Dist.Gadchiroli.

.. Defendants

SUIT FOR RECOVERY OF POSSESSION

.....
Shri. K T Satpute, Advocate for the plaintiff's.

Shri. V S Lokhande, Advocate for the defendant's.
.....

JUDGMENT

(Delivered on 30/07/2019)

This is a suit for recovery of possession of 0.13 HR encroached land shown in the plaint map alphabet 'A' out of field gut No.297 admeasuring admeasuring 1H 20R situated at village Durgapur.

Brief facts of the plaintiff's suit are as under :-

2. It is the contention of the plaintiffs that, they are the heirs of deceased Brijobar Jagbandhu Haldar. The plaintiffs jointly own and possess the field gut 297 admeasuring 1H 20R land situated at village Durgapur. The said field property is more particularly described in plaint para 2 which is here-in-after referred as 'suit property' for brevity. The

plaintiffs' ancestor Brijobar migrated from east Pakistan to India and the Government of India allotted the suit property to him for the livelihood. The deceased Brijobar during his lifetime used to take the paddy crops from the suit property. After his demise, the name of plaintiffs is recorded in the revenue record of the suit property. The plaintiffs were jointly cultivating the suit property and nobody ever obstructed their possession, but the defendants without any rights in the suit property illegally encroached on some part of the suit property towards eastern side in December 2015. Plaintiff No.1 to 3 accosted the defendants to their said illegal act but of no use. Therefore, plaintiff No.1 filed an application before TILR Chamorshi to measure the suit property and to get fixed the boundaries of the suit property. On the said application, the cadestral surveyor N. A. Kunghadkar measured the suit property. In the said measurement, it is revealed that defendants encroached upon 0.13HR land out of suit property towards its eastern side. The plaintiffs filed the C sheet of the measurement map which plaintiffs urged to treat as plaint map. The encroachment of the defendants is shown in the said sheet in red colour by alphabet 'A'. The defendants did not pay any heed to the request of the plaintiff to return the encroached land. Therefore, the plaintiffs are constrained to file the suit for recovery of possession.

3. The defendants by filing the written statement vide Exh.11 resisted the suit claim. They denied all the adverse allegations. It is their contentions that the plaintiffs have no cause of action to file the suit. The plaintiffs on the basis of false averments filed false suit. The alleged encroached 0.13HR land as mentioned in the plaint out of field gut No.297 belongs to defendant No.1. Defendant No.1 since his ancestor is in possession and cultivation of the said land. The field gut No.298 is the Government land and same is in the name of defendants. Defendant No.1 is in possession of field gut No.298 and the TILR has falsely shown

0.13HR land as of field gut No.297 in the measurement. While, the plaintiff grabbed the land of defendant No.1. The plaintiffs did not mention in the plaint about possession of defendant No.1. The boundaries are not properly shown in the measurement map. The map filed by the plaintiffs is false. The plaintiffs and their ancestor are having no concern with said 0.13HR land. Therefore, the plaintiffs are having no right to disturb the possession of the defendants over the said land. The defendants have filed the documents regarding ownership. The defendants are owner and possessor of the land as shown in the plaint therefore, the plaintiffs are having no right to disturb the possession of defendants. As defendants are in settled possession of the suit property, the alleged right of plaintiffs came to an end. Hence, it is urged to dismiss the suit.

4. On the basis of material available on record, my learned predecessor framed the following issues at Exh.12. I have reproduced the same and my findings thereon for the reasons are enumerated below.

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whether plaintiff prove that defendants have made encroachment over suit property block No.297 area 13R ?	<u>In affirmative.</u>
2. Whether plaintiffs are entitled for decree of possession, permanent injunction and mandatory injunction as prayed ?	<u>In affirmative.</u>
3. What order and decree ?	<u>As per final order.</u>

REASONS

AS TO ISSUE NO.1 AND 2 :-

5. In order to substantiate the claim for recovery of possession,

plaintiff No.1 has examined himself by filing his affidavit in lieu of examination-in-chief as PW-1 Deepak Haldar at Exh.15. The cadastral surveyor PW-2 Nitin Anandrao Kunghadkar is examined at Exh.33. PW-3 Parimal Sadhu is examined at Exh.35. The plaintiffs closed their evidence by filing the pursis vide Exh.43. On the other hand, the defendants examined defendant No.1 as DW-1 Milan Dulal Mandal by filing his affidavit at Exh.52. DW-2 Dulal Dhiren Mandal is examined at Exh.61. DW-3 Manik Hriday Mandal is examined at Exh.64. DW-4 Jasho Khokan Mandal is examined at Exh.65. The defendants closed their evidence by filing the pursis vide Exh.67. The plaintiffs and defendants have filed various documents on record which are referred in the succeeding paras as per their relevancy.

6. PW-1 Dipak Haldar by filing his affidavit in lieu of examination-in-chief reiterated the entire facts as averred in the plaint. During cross-examination, he stated that since the defendant got the filed gut No.298, he is cultivating the same. He stated that, there is canal towards southern of his field and towards western there is a land of Khokan. He denied that few portion of his land went in the said canal and few portion of land is in possession of Khokan. He admitted that since beginning he is not having good terms with defendants.

7. PW-2 Nitin Kunghadkar who is cadastral surveyor stated in his evidence that on 15/1/2016, he was attached with Deputy Supdt. of land record Chamorshi as cadastral surveyor. On 1/01/2016, the plaintiff filed an application to his office for measuring the survey No.297. As per said application, he issued the notices to applicant, adjoining land owners and co-owners. On the fixed day, he went in survey No.297 with all the articles of measurement. The applicant in presence of adjoining land owners show his occupancy and he by putting lime fixed the demarcation.

He with the help of map in his office, 7/12 extract and plain table, measured survey No.297. He compared the permanent boundaries and occupancy with the map in his office and thereafter, with the help of said map and permanent boundaries he conducted the demarcation. He prepared the A sheet of map. The contents of the C sheet of measurement map are as per A sheet. Said C sheet is proved at Exh.34. He further stated that the land shown in the map by alphabet A is the land of field survey No.297 and said land is in possession of owner of survey No.298. At the time of measurement, Dipak Haldar, Dilip Haldar, Dinesh Haldar, Kenanand Mandal, Manik Mandal, Sanjit Sudhir Sardar, Prabhash Sarvada Kamal, Parimal Sadhucharan Sarkar, Milan Mandal and Kapil Khokan Mandal were present. Milan Dulal Mandal refused to sign on the map. The measurement map bear the signatures of others.

8. During cross-examination, he stated that the 7/12 extract of survey No.297 bear the name of 8 people out of which Dipak Haldar filed an application for measurement. He further stated that, he issued the notices to other people as mentioned in the 7/12 extract but he did not file the same on record. He further stated that he issued the notices to three persons whose name appeared in the 7/12 extract and he took the signatures of said three persons. Said three persons shown the occupancy. He was unable to state that to whom field survey No.296 belongs. Khokan was not present at the time of measurement, however, he voluntarily stated that his son was present on the spot. He further stated that, he did not show the demarcation of the canal in the map. He admitted that in the original map, survey No.297 and 298 are shown in the same line. He further stated that after measurement he came to know that the applicant has shown the occupancy from survey No.297. He further stated that defendant did not raise objection at the time of measurement. He further stated that, he does not know whether all record of suit property is lying with rehabilitation

department. He admitted that, he did not call any record from rehabilitation department at the time of measurement. He denied that, he conducted the false measurement.

9. PW-3 Parimal deposed that the field gut No.295 situated at Durgapur belongs to him. His land is situated near the suit property. The defendants in December 2015, encroached upon eastern portion of suit property. At that time, he was present there therefore, he knows about it. During his cross-examination, he was unable to recollect the area of the suit property. He admitted that the land of Khokan is situated adjacent to his land.

10. DW-1 Milan by filing his affidavit in lieu of examination-in-chief at Exh.52 reproduced all the facts as averred in the written statement with addition that his father namely Dulal Biren Mandal measured the field survey No.298 on 08/04/1986 and to that effect notice is filed on record. The plaintiff and his father did not raise any objection to the measurement conducted in the year 1986. As per said measurement, the plaintiff's father fixed the boundaries. The plaintiffs were never in possession and cultivation of the suit property. During cross-examination, he admitted that in 2016, the plaintiff got measured the suit property and at that time he was present there. He admitted that, he did not raise any objection before Deputy Supdt. of land record and Supdt. of land record against said measurement. He admitted that after said measurement the plaintiff asked him to return 0.13HR land and he did not give the same. His further cross-examination is bare set of denials.

11. DW-2 Dulal deposed that, he knows plaintiffs and defendants. The defendants are in possession of survey No. 298 admeasuring 1.20HR. Since the defendant's father got the said land from Government, he was in

possession of the said land. The defendant's father died on 16/3/2001. After his demise, the defendant Milan is possessing said 1.20HR land and taking the paddy crop. The defendant did not encroach on the suit property and possession of defendant over said 1.20 HR land is continuous since Government allotted the land to defendant's father. During his cross-examination, he stated that he did not see the documents of the defendant's field and therefore, he can not say to whom rehabilitation department allotted the land and how much land was allotted. He admitted that, he is having good relations with defendant. It is further revealed in his cross-examination that his land is situated at the distance of 1km from the suit property.

12. As per the testimony of DW-3 Manik Mandal, he is having field bearing gut No.299 towards eastern of defendant's land. His testimony further reveals that the defendants since the time of his father is in possession of field gut No.298. During cross-examination, he stated that his son cultivate his field and his livelihood is depend upon his son. He further stated that, his son since 15 to 20 years is cultivating his field. He further stated that, he does not understand the encroachment. His cross-examination further reveals that Milan is the son of his cousin brother.

13. DW-4 Jasho Mandal deposed that the suit property is situated towards eastern of his field gut No.296. Towards western, the field gut No.295 is situated, towards northern there is a way and towards southern there is a canal. The field gut No.298 belonging to the defendants is situated towards eastern of the suit property and since the time of his ancestor, the defendant is possessing the land in field gut No.298. He further stated that the possession of defendant over field gut No.298 is continuous. His cross-examination reveals that, he does not understand the encroachment.

14. On the above aspects of evidence, the learned counsel for plaintiffs submitted that, the plaintiffs by filing the documents proved that the suit property was allotted to the ancestor of the plaintiffs for cultivation. The plaintiffs by oral and documentary evidence proved the possession of the plaintiffs over said land and also proved the encroachment of the defendants over the suit property. Nothing has come in the cross-examination of cadastral surveyor to disbelieve his testimony. The defendants though stated about incorrect boundaries, however, nothing has come on record in support thereof. While the defendant Milan admitted in his cross-examination the said four boundaries. The plaintiffs have proved the encroachment of the defendants over the suit property and therefore, the plaintiffs are entitled for recovery of possession.

15. On the other hand, the learned counsel for defendants submitted that the plaintiffs are having no document of title. The plaintiffs did not place the patta of the suit property on record. The plaintiffs filed only the revenue documents from which title can not be established. The plaintiffs did not seek the mandatory injunction. Even though, the defendants have no case, the plaintiffs are required to establish their case on its footing. The surveyor does not know the boundaries and area of others land. In cross-examination the surveyor admitted that he did not show the boundary of canal in the map which is situated towards southern of the suit property. Certainly due to said canal the area of the suit property has reduced. The plaintiffs has measured the suit property only to create the cause of action. As in the measurement, the canal is not shown, the said map can not be believed. While, the surveyor admitted in his cross-examination that, he measured the suit property only as per the say of plaintiffs. The defendant denied to sign the measurement map as he knew that the measurement was not proper and legal. There is no reliable

document of ownership of suit property. The plaintiffs have failed to prove their claim. Hence, it is urged to dismiss the suit.

16. In support of their submission, the learned counsel for defendants placed reliance upon the decision in the case of Dulichand s/o Ganuji Gajbhiyei (deceased and L.Rs. Of appellant brought on record) Leelabai wd/o Dulichand Gajbhiye and others Vs Shankarlal s/o Radhakrishan Agrawal reported in 2018(5) Mh.L.J.-424, in which it is observed that it is settled law that when a plaintiff approaches the Court on the basis of title, the burden is entirely upon him to prove his title. The relief claimed by the plaintiff can not be granted even if the defendants have failed to prove their case.

17. I have considered the argument advanced from both sides and also gone through the citation relied by defendants as well as the documents filed from both sides. The plaintiffs have come with the case that the defendants have encroached upon suit property to the extent of 0.13HR towards eastern side. The said encroachment is revealed in the measurement carried out by TILR. While, the defendants have come with the case that, said 0.13HR land is the part of field survey No.298 belonging to the defendants. The TILR Chamorshi in collusion with the plaintiffs wrongly shown the said area as of the field gut No.297. According to the defendants, the plaintiffs themselves encroached upon their land. In this regard, PW-1 Dipak by filing his affidavit consistently stated about the encroachment of defendants over his land. During his cross-examination, it is tried to bring on record that few part of his land went in canal and few part is under the encroachment of Khokan, however, nothing is elicited in this regard. It is argued on behalf of defendants, that the plaintiffs have mentioned the improper four boundaries, however, during cross-examination, PW-1 Dipak consistently stated that towards southern of the suit property, there is a canal and that towards western

there is a land of Khokan. The four boundaries are admitted by DW-1 Milan in his cross-examination. Further, no material is placed on record on behalf of defendants to show that the four boundaries of the suit property are false or improper. PW-3 Parimal corroborate the testimony of PW-1 Dipak and nothing has come in his cross-examination.

18. The learned counsel for defendants vehemently submitted that the plaintiff did not file any document to show his title over the suit property. So far as the ownership of the plaintiffs over the suit property is concerned, in cross-examination, DW-1 Milan admitted that the Government has allotted the field gut No.297 admeasuring 1H.20R land to Brijobar who is the father of plaintiffs. Thus, so far as ownership of the plaintiffs over the suit property is concerned, it reveals that the defendants did not dispute that the Government has allotted the suit property to plaintiff's father as he migrated to India. The plaintiffs also filed certified copy of record of the migrants agricultural land with list Exh.70. On perusal thereof, it reveals that the plaintiff's father Dijobar(Brijobar) received the field gut No.154 and 141. The renumbering parcha filed by plaintiffs shows that said bandobast survey number 154 is renumbered as 297 ie suit property. The plaintiffs also filed the copy of 7/12 extract Exh.22 and village Namuna 8-A Exh.23. It reveals that the name of plaintiffs is recorded in the 7/12 extract of field gut No.297 after demise of his father Brijobar. Further, the entry of the name of plaintiffs is also taken in village namuna 8-A. While, it reveals from the certified copy of record of the migrants register filed by defendants alongwith list Exh.73 that field gut No.153 and 142 were allotted to Dulal Biren Mandal who is the father of defendant No.1. The copy of renumbering parcha further shows that said two field gut No. that is 153 and 142 renumbered as 298 and 283. Thus, it is clear that both the plaintiff's father and the father of defendant No.1 got the separate land having separate gut numbers.

19. Now turning to the evidence of PW-2 Nitin Kunghadkar, the cadastral surveyor. He consistently stated that, he measured the suit property on the basis of plain table and the map in their office. It reveals from his evidence that during measurement he found travers marks or permanent boundary marks of the relevant survey number on the site. He compared the same with the record of his office. He found the encroachment over the suit property of the owner of field gut No.298 which he shown in the measurement map by alphabet A. The evidence of said witness is assailed on behalf of defendants on various grounds. It is contended on behalf of defendants that the said witness does not know to whom field survey No.296 belongs and also does not know the survey numbers of the people to whom he issued the notices and the area of the said survey numbers. The said witness during cross-examination denied that at the time of measurement, they are required to see the documents of the fields of adjoining land owners. The evidence of said witness revealed that, he duly issued the notices to the adjoining land owners. Further, his evidence reveals that the applicants shown him the occupancy in presence of adjoining land owners. Therefore, merely because the said witness was unable to state the survey number of others land, the same is not fatal and his evidence can not be viewed with suspicion.

20. His evidence is further assailed by highlighting the fact that, he did not show the boundaries of the canal in the measurement sheet. He consistently stated that towards southern of suit property there is canal. During his cross-examination, it is tried to bring on record that if the flood comes to the canal, then the soil erosion caused due to flood. Though, the said witness affirmed the said fact, however, no evidence has come on record that the flood ever came in the said canal and that any portion of the land on plaintiffs flow in the flood. Even the evidence of defendant's

witnesses is silent on the said point.

21. Though, the evidence of PW-2 Nitin Kunghadkar is assailed on behalf of the defendants by contending that said witness did not call any record from the rehabilitation department, however, the said witness consistently stated that he compared the permanent boundary marks with the record of his office. Admittedly, the plaintiff provided 7/12 extract and map to the said witness. His office also have the revenue survey map of the relevant survey number. Further, no specific suggestion was given to the said witness that which document he ought to have called from the concerned rehabilitation office. Sufficient record of said survey number was available with said witness. Therefore, the contentions in this regard is having no substance.

22. The perusal of the evidence of cadastral surveyor PW-2 Nitin Kunghadkar specifically shows that he measured the said field. During measurement, he found travers marks or permanent boundary marks of the relevant survey number on the site. He compared the same with the record of his office, that is, the revenue survey map of the said field. Travers marks or permanent boundary marks of the said gut number are specifically shown in the measurement map Exh.34 in plain line. Once, the travers marks/permanent boundary marks are found on the actual site, it becomes easy to measure the land and to bring to fore the encroachment, if any.

23. The Perusal of the evidence of the cadastral surveyor and the measurement map Exh.34 further clearly show the possession of the defendants on the land of plaintiffs, that is, beyond the permanent boundaries marks of the said survey number and in the field of plaintiffs. The said possession is shown by alphabet A in the measurement

sheet(Exh.34). Though, it reveals from the said map Exh.34 that the plaintiff also encroached upon 0.03HR land of field gut No.298 which belongs to the defendants, however, the defendants have not claimed the said area by way of counter claim. Hence, even though certain portion of the land of defendants seems to be in possession of plaintiffs, the same does not affect the case of the plaintiffs.

24. DW-2 Dulal, DW-3 Manik and DW-4 Jasho stated in their evidence that defendants have not encroached upon the land of plaintiffs, however, DW-3 Manik and DW-4 Jasho stated in their cross-examination that they do not understand the encroachment. Therefore, no importance can be given to their testimony to the effect that the defendants did not encroach upon the suit property. Considering the fact that the encroachment of defendants on the suit property has come on record from the testimony of PW-2 Nitin Kunghadkar, the oral testimony of said witnesses can not be acted upon. What can be gathered from their testimony is that the defendants are in possession of field survey No.298 in respect of which the plaintiffs are also not having any dispute. Both the gut number that is field gut No.297 and 298 are different and the defendants have not established that the encroached land is the part of field gut No.298. The documents filed by the plaintiffs show that the suit property was allotted to their father deceased Brijobar. The said fact is also admitted by defendant Milan in his cross-examination. As plaintiffs have proved their title over the suit property, the decision in the case of Dulichand cited supra relied by defendants would be of no assistance to the defendants. There is nothing in the cross-examination of the cadestral surveyor to disbelieve or raise suspicion on his evidence. Further, there is nothing in his evidence to show that the measurement carried out by him has any lacuna or is incorrect. The evidence of cadestral surveyor(PW-2) clearly proves that the defendants have encroached upon 0.13HR land of plaintiffs

shown in the map Exh.34 by alphabet A. Consequently, the plaintiffs are entitled to recover possession of aforesaid encroached land from defendants. Hence, I answer issue No.1 and 2 in affirmative.

AS TO ISSUE NO.3 :-

25. In the above discussion, it has come on record that the defendants have encroached upon 13R land over the suit property. Therefore, the plaintiffs deserve for recovery of said encroached land from the defendants. Hence, the suit deserves to be decreed. In the result, I pass the following order.

ORDER

1. The suit stands decreed with costs.
2. The defendants are hereby directed to hand over the possession of 0.13HR agricultural land shown in the map by alphabet A to the plaintiffs within 2 months from today.
3. The measurement map Exh.34 shall form part of decree.
4. Decree be drawn up accordingly.
5. Judgment is dictated and pronounced in open court.

Date :-30/07/2019.

Sd/-
(M.Z.A.A.Q. Quraishi)
Civil Judge, (Jr.Dn.),
Chamorshi.
MHGA09-2200.