

ORDER BELOW EXH. 5

1. This is a suit for Permanent Injunction. Present application is filed under O. 39, R. 1 and 2 and Sec. 151 of CPC. It is contention of plaintiff that plaintiff has purchased a plot having area 0.05 HR (east-west 20 feet and north-south 60 feet) out of Gat No. 569/B-1 (Now Gat No. 596/B/4) situated at Amgaon, Tah. Amgaon from Kamlabai Bharatlal Bhandarkar on 17.03.1994. (Here-in-after referred as suit property).

2. Plaintiff is in possession of said plot from the date of purchase. On 08.08.2018 plaintiff came to know that defendant has digging pit with the help of machine on suit property. Therefore, plaintiff went on suit property. At that time, she found that defendant trying to encroach on suit property by digging pit for making construction on area east-west 2.5 feet from northern side and north-south 5 feet from southern side and in length 60 feet. When plaintiff protest his illegal activity, defendant threatened her. Therefore, plaintiff filed present suit for permanent injunction and also filed present application for obtaining ad interim injunction that defendant should not disturb her possession over suit property.

3. Defendant appeared before Court and filed his written statement at Exh. 17. Defendant denied pleading of plaintiff in toto. He specifically submitted that the defendant has purchased plot situated at Amgaon having length north-south 72 feet and width east-west 40 feet, total area 2880 sq. feet. for valuable consideration of Rs. 1,03,000/- vide registered sale-deed on 19.06.1997 having Kachha house on portion 20 x 15 feet from Bharatram Bhandarkar, Kamlabai Bhandarkar and Sushilkumar Bhandarkar. On the east side of said plot, plot of plaintiff is

situated. Now defendant toppled down old Kachha house and started the construction on his own land having area 40 x 72 feet. He never trying to encroach or dispossess the plaintiff by making construction on suit property as claimed by plaintiff. Plaintiff has never got measured the suit land and falsely and illegally tried to obstruct the construction work of defendant. Plaintiff has not legal right to restrain the defendant from making construction on his own plot. Therefore, present application may be rejected.

4. Following points arise for my determination. I record my findings thereon for the reasons stated here-in-after.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	<i>Whether the plaintiff made out prima facie case in her favour ?</i>	<u>.. In the affirmative</u>
2)	<i>Whether the balance of convenience lies in favour of the plaintiff ?</i>	<u>.. In the affirmative</u>
3)	<i>Whether plaintiff proves that she cause irreparable loss if injunction is not granted in her favour ?</i>	<u>.. In the affirmative</u>
4)	<i>Whether the plaintiff is entitled for the temporary injunction sought ?</i>	<u>.. In the affirmative</u>
5)	<i>What order ?</i>	<u>.. As per final order.</u>

REASONS

As to point Nos. 1 to 3 :-

5. I am going to discuss all the points together as they are interlinked and it will facilitate me to adjudicate the matter at once. In present case, plaintiff claim that she is owner of suit property. In support of her claim plaintiff filed xerox copy of sale-deed dated 17th March, 1994 at Exh. 4/1, xerox copy of Akhiv Patrik of suit property at Exh. 4/3 & 4/4,

xerox copy of Gaon Namuna 9A at Exh. 4/5, xerox copy of measurement map of suit property at Exh. 4/6, xerox copy of Tax receipt of suit property at Exh. 4/7 and 4/8 and xerox copy of 7/12 extract of suit property at Exh. 4/9 and 4/10. Perusal of above all documents show that plaintiff purchased plot bearing No. 596/B-1 from Kamlabai Bhandarkar on 17.03.1994 for consideration of Rs. 21,000/-. Area of said plot was 60 x 20 feet, total 1200 sq.ft. Thereafter, she measured and demarcated suit property on 28.12.1999. Accordingly, TILR Office issued K-Prat of measurement map. Said property was duly recorded on the name of plaintiff in revenue record. Now Gat No. 596/B-1 is recognized as 596/B/4. In 7/12 extract filed at Exh. 4/10 the area of Gat No. 596/B/4 is also shown as 60 x 20 feet, total 1200 sq. ft.. Thus, above all documents prima-facie shows that plaintiff is owner and possessor of suit property.

6. Now plaintiff claimed that defendant try to encroach over suit property on 08.08.2018 by digging pit with the help of machine for making construction over suit property in area east-west 2.5 feet from northern side and north-south 5 feet from southern side and in length 60 feet. Defendant denied the allegation of plaintiff and submitted that plaintiff never demarcated her plot and by taking undue advantage of measurement map trying to obstruct his construction work. However, as discussed above, plaintiff already measured her property through TILR on 28.12.1999 and demarcated suit property. Therefore, I have not found any merit in the submission of defendant.

7. Furthermore, defendant claimed that he purchased plot situated at Amgaon having length north-south 72 feet and width east-west

40 feet, total area 2880 sq. feet. for valuable consideration of Rs. 1,03,000/- vide registered sale-deed on 19.06.1997 having Kachha house on portion 20 x 15 feet from Bharatram Bhandarkar, Kamlabai Bhandarkar and Sushilkumar Bhandarkar. In support of his claim defendant filed xerox copy of sale-deed dated 19.06.1997 and 7/12 extract of his property at Exh. 16/3. Perusal of said documents shows that though defendant purchased plot bearing Gat No. 596/B-1 having area 2880 sq.ft.. In revenue record only 2.00 HR area is recorded on his name. Thus, 7/12 extract filed by defendant itself shows that he is in possession of only 2.00 HR area and not 2880 sq.ft. area.

8. Furthermore, defendant claimed that when he purchased suit property there was old kaccha house. Now he toppled down said kaccha house and started new construction. However, sale-deed filed by defendant shows that there was old kaccha house on 20 x 15 i.e. 300 sq. ft. area. In written statement in para 12, defendant specifically mentioned that he started construction on his own land on area 40 x 72 sq. ft. i.e. 2880 sq. ft. It shows that though in revenue record only 2.00 HR land shown in possession of defendant, he started construction on excess area. Therefore, prima facie it is seen that defendant starting construction on excess area which is not in his possession.

9. Furthermore, plaintiff claimed that defendant started alleged construction without permission of competent authority. On that point, defendant keep mum. It prima facie shows that defendant started construction without permission of competent authority. Furthermore defendant not produced single document which may show that he measured his plot, prepared construction map and obtained permission

from competent authority before starting construction. Therefore, I have not found any merit in the defence of defendant that he started construction in his own plot.

10. Furthermore plaintiff filed affidavit of two witnesses namely Sampat Wadhai and Anantram Ukey in support of her claim. Both these witnesses specifically mentioned that they are witness of the registered sale-deed executed in favour of plaintiff. They also stated that defendant try to encroach on suit property. Per contra defendant also filed affidavit of two witnesses namely Dinesh Jambhulkar and Raju Bhandarkar, who stated that defendant started construction on his own plot over area 40 x 72 sq. ft. However, as discussed above in revenue record only 2.00 HR land shown in possession of defendant. Therefore, the affidavits filed by defendant found suspicious.

11. After considering above all discussion, I have come on conclusion that plaintiff prima facie succeed to prove that she is owner and possessor of suit property. She already measured and demarcated her plot. However, defendant start construction without measurement of his plot and without permission of competent authority. In such circumstances, if ad interim injunction as prayed by plaintiff not granted, then certainly she will cause irreparable loss. While defendant has every opportunity to measure and fix boundary of his plot and thereafter by obtaining permission from competent authority to start construction in his plot. Therefore, he will not suffer any irreparable loss, if ad interim injunction granted.

12. In the light of above discussion, I have answered point Nos. 1 to 3 in the affirmative.

13. As to point Nos. 4 to 5:-

I have answered to point Nos. 1 to 3 in affirmative and held that plaintiffs succeed to prove triple test required for obtaining ad-interim injunction. Hence, I have answered point No. 4 in the affirmative and pass following order in the answer of point No. 5.

ORDER

1. Application is hereby allowed.
2. Defendant, his agents, friend, servant or any other person claiming on his behalf be restrained from making construction over portion shown in red colour in plaint map till final disposal of suit.

Amgaon
Date : 17.09.2018

(A. S. Deshmukh),
Civil Judge (Jr. Dn.), Amgaon.