

MHGO060005762021



ORDER BELOW EXH.53
(Passed on 19/07/2024)

This is an application filed by the defendants for the joint measurement of Gat No. 114 admeasuring 0.68 H.R. land and Gat No. 115 admeasuring 0.84 H.R. land situated at Mauza Korambhi, Tq. Arjuni/morgaon, Dist. Gondia. Say filed by plaintiff.

2. The learned advocate for the defendants submitted that the plaintiff has filed instant suit for permanent injunction restraining the defendants from creating obstruction in the suit property i.e. Gat No. 114. He further submitted that the adjacent land of suit property is Gat No. 115. This is the government land and under the water. The defendants G.P. Korambhi has never create any obstruction in the suit property. Per contra, the plaintiff is trying to demolish the boundaries of Gat No. 115 and filed false suit against the defendants. Therefore, he prayed for the joint measurement of Gat No. 114 and Gat No. 115 situated at Mauza Korambhi, Tq. Arjuni/morgaon through an expert so as to determine real matter in controversy.

3. On the other hand, the learned advocate for the plaintiff submitted that plaintiff is the owner and in possession of 0.68 H.R. land of Gat no. 114 situated at Mouza Korambhi, Tq. Arjuni/morgaon, Dist. Gondia (suit property). He further submitted that defendants are obstructing and create interference into his lawful possession over the suit property. Therefore, he prayed

permanent injunction against the defendants. He further submitted that there is no encroachment by the defendants, therefore, there is no need for the joint measurement of Gat No. 114 and 115. He further submitted that only for the purpose of delay the suit, defendants filed this application.

4. Heard learned Advocate for both the sides.

5. I have given sincere consideration to the rival contention of both the parties. Perused the record and documents filed by the plaintiff. The plaintiff filed on record 7/12 extract of the suit property i.e. Gat No. 114. After perusal of this documents, it is seen that the plaintiff is the owner and in possession of Gat No. 114. This fact is also not disputed by the defendants. Further, this is the suit for permanent injunction and not the removal of the encroachment. There is no boundaries dispute between the parties. It is prima facies seen that the defendants filed this application only for the purpose of collecting the evidence against the plaintiff. On this point, I would like to rely in the case of **Vinayak Eknath Thokal Vs. Sakhubai Pandit Khawate and oths.** dated 20.10.2018. In this case hon'ble Bombay High Court held "*Court commissioner should be appointed after the recording of the oral evidence and not for collecting the evidence.*" Thus, after considering the facts of the case and after relying the aforesaid judgement, I pass the following order.

Order

1. The application is rejected.

Sd/-

Dated 19/07/2024

(N. V. Sahu)
Civil Judge J. D.
Arjuni/Morgaon