

RCS No.97/2022

Santosh & ors. Vs. Amol & ors.

CNR No.MHJN090004892022

**ORDER BELOW EXH.5**

1] Plaintiffs have filed the present suit for the relief of Perpetual Injunction with interim application for grant of Temporary Injunction against defendants.

**Brief facts of plaintiffs case are as under:**

2] Plaintiffs contended that the property bearing gat no.210, admeasuring 5H 87R, situated at village Nanegaon, Tq.Badnapur, Dist.Jalna bounded as towards East : Gat No.203, land of defendant no.1 to 3, towards West : Nala, towards North : Gat No.211, land of defendant no.4 and 5, towards South : Gat No.208 and 209, land of defendant no.6 to 10 (in short referred as suit property) is ancestral property of plaintiffs. They are owner and possessor of the suit property. Plaintiffs are taking various crops from the suit property and they jointly owned and possess the same. Defendants are adjacent land holders of the suit property. Plaintiffs further contended that since 7 to 8 years, defendants are trying to obstruct the peaceful possession of plaintiffs over the suit property and thereby damaging bandh from East, South and North side of the suit property and also cutting valuable trees on the suit property. Plaintiffs tolerated all these activities only with view that one and other day defendants behaviour will improve. Plaintiffs further contended that wife of defendant no.2 was elected as Sarpanch of village. Defendants by using political pressure are trying to obstruction in the peaceful possession of plaintiffs over the suit property. On

03.07.2022 defendants with collusion with each other damaged bandh towards East, South and North side with ill intention and to grab the property of plaintiffs. Plaintiffs made request to defendants not to make such obstructions. However, defendants never paid any kind of heed to the said request of plaintiffs. On the contrary, by using political pressure defendants initiated a proceeding u/s 107 of Cr.P.C. against plaintiffs. Defendants had caused damage of the bandh of the suit property and in order to determine the damage portion of the bandh. It is just and necessary to cause measurement of the suit property from the competent authority, therefore it is necessary to appoint Court Commissioner for measurement of the same. Lastly, plaintiffs contended that they have strong case on merit and the prima facie and balance of convenience is also in their favour. Therefore, it is just and necessary to restrain defendants by granting injunction till pendency of the suit.

**Brief facts of defendants case are as under:**

3] Defendant no.1 to 5, 8 and 9 filed their say below Exh.19 and defendant no.10 filed his say below Exh.42 and thereby denied the contention of plaintiffs in the plaint and application. Defendants contended that suit of plaintiffs is not maintainable and only filed for harassment of defendants. Defendants are land owners of land bearing Gat No.203 and 202. Defendant nos.1 to 3 are the owner of the land bearing Gat No.203. Defendant nos.4 and 5 are the owner of land bearing Gat No.211 and defendant nos.8 and 9 are the owner of land bearing Gat No.208 and this land is given by execution of gift

deed in favour of defendant no.9. Defendant no.9 is running education institution of the said premises as Rajureshwar Gramin Vikas Sevabhavi Sanstha, Karjat, Tq.Ambad, Dist.Jalna.

4] Defendants denied allegations made by plaintiffs regarding creating damages to the bandh as well as cutting of trees. In fact, they contended that in the suit property, Badnapur to Pachora road is going and so that land bearing Gat No.210 is divided in two parts, towards Western side of land bearing Gat No.210 is Nala and towards Southern side of Gat No.203 and 211 situated. The land of other agriculturist are also situated in the premises. Therefore, the contention of obstruction at the hands of defendants is totally false. Defendants no.1 has filed complaint against plaintiff no.1 at Badnapur Police Station and N.C. was registered against him. Plaintiffs themselves destroyed the bandh of defendant no.1 and one person namely Rajesh Chavan and thereby towards the approach road of defendants and make encroachment. Plaintiffs themselves have causing obstructions in the approach way and trying to destroy the existence of the approach way under the garb of injunction order. Therefore, plaintiffs are not entitled for the relief sought and there is no prima facie case to plaintiffs.

5] Heard Ld. advocates for both sides.

6] Considering the argument and facts and circumstances of the case following points arise for my determination and I am giving my findings against those points for the reasons stated thereunder.

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1	Do plaintiffs prove the prima facie case?	...In the negative.
2	Whether the balance of convenience is tilting in favour of plaintiffs?	...In the negative.
3	Whether plaintiffs will be put to suffer irreparable loss if the injunction is refused?	...In the negative.
4	What order?	As per final order

### **REASONS**

7] In support of the contention of the application plaintiffs have filed copy of 7/12 extract of the land bearing Gat No.210, situated at village Nanegaon, Tq.Badnapur, Dist.Jalna, copy of complaint dated 08.07.2022, Photo copies of the suit propert, Heirship Certificate, Toch Map, Mutation extract no.1394, Self declared boundaries and Death Certificate of plaintiffs mother. Defendants have placed reliance copy of 7/12 extract of land bearing Gat No.203, Toch Map of land bearing Gat No.203, 204, 209, 210 & 211 and copy of N.C. bearing no.606/2022.

#### **As to point nos.1 to 3**

8] After going through the contention of the both parties, it appears that plaintiffs and defendants are adjacent land owners. It is further revealed from the pleading and documents that the dispute between the parties is in respect of the bandh, boundary and approach road of the land holders. Defendants claiming that plaintiffs under the garb of present

proceeding wants to create obstruction on the approach road of defendants, whereas plaintiffs are claiming that defendants are trying to cause damages of the bandh.

9] Since the present application is for Temporary Injunction, therefore in the light of pleading and document it is just and necessary to see whether plaintiffs have prima facie case. As mentioned herein above, there is dispute of boundaries between the parties. In such circumstances, it is necessary to go through revenue record and the measurement map of adjacent land holders which is prepared by the revenue department while maintaining record of land of adjacent gat numbers. In the present case defendants are relying on the toch map of the adjacent land holders of the suit property and they have filed certified copy of the toch map in respect of the land bearing Gat Nos.203, 208, 209, 210 & 211. After going through the toch map filed below Exh.31 it discloses that the boundaries mentioned in the suit in description clause of the plaint is mismatching with the toch map. As per the map towards Northern side, there is no remark about nala as pleaded by plaintiffs in the suit in description clause. Furthermore, defendants are claiming existence of the approach road over the suit property is concerned, this aspect is also not clarify from the said toch map and for the more clarification of the exact location to determine nature of the suit property, it needs to proper measurement map of the suit property on record. In absence of such map it is very difficult to hold that defendants are interfering on the bandh.

10] It is well settled that while determination the dispute of approach way and boundaries between the land holders, it is just and necessary to cause joint measurement between the parties, otherwise it is not proper to adjudicate such dispute in absence of measurement of the suit property. In the present case though the plaintiffs made such averment in the plaint about measurement, but they have not moved such application on record to cause measurement of the suit property.

11] Considering the above facts, pleading of the parties had not lays proper foundation so as to find out certain facts regarding damages of bandh and boundaries even in present situation considering pleading of the parties this issue need to be decide after complete evidence of both parties. In my opinion, it is not possible to hold that defendants have damaged the bandh and cause interference over the suit property without proper measurement of the same. The joint measurement is very decisive to determine dispute of boundaries and approach road between the parties. Therefore, I hold at this stage plaintiffs failed to prove that defendants caused interference over the boundaries as alleged even from the pleading and documents. Plaintiffs themselves admit that since last 7 to 8 years dispute over the boundaries is going on between the parties. In circumstances, I found no prima facie case and also balance of convenience not tilt in plaintiffs favour and if injunction as sought not granted will not cause any irreparable loss to them. In such circumstances, delay also shows that plaintiffs have failed to establish their prima facie case against defendants to

grant interim relief as sought. Hence, at this stage considering above discussion, I answer of point nos.1 to 3 “in the negative” and answer of point no.4 proceed to pass following order.

**ORDER**

1. The application is rejected.
2. No order as to costs.

Date: 08.06.2023.

(Smt.P.V.Raut)  
Civil Judge J.D.,  
Badnapur.