

**ORDER BELOW EXH. 5**

Plaintiff has filed present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. Facts of the plaintiff's case are as under :

2. That the plaintiff is the owner and possessor the land to the extent of 81 R which is bounded as towards East : land of Asarabai Vitthal Nannavare, towards West : Government road, towards North : Government school and land gut no. 44, towards South : remaining part of gut no. 79 in possession of defendant no.1 situated at gut no. 79 at Devpimpalgaon, Tq. Badnapur. (Hereinafter shall be referred to as the suit property).

3. Defendant no. 1 has purchased land in gut no. 315 to the extent of 1 H 42 R towards southern side of the suit property. Thereafter, defendant no.1 is trying to obstruct and interfere in the lawful possession of the plaintiff over the suit property. On many occasions, plaintiff has requested her not to do so. He has also told this fact to respectable persons from the village. But defendants are adamant.

4. Defendant no. 1 has encroached some portion of the suit property from the southern side. Many times plaintiff has requested her to vacate the said portion. But she did not do so. Hence, plaintiff had applied to the office of land records, Badnapur for measurement of the suit property. Accordingly, the concern officers, after issuing notices to adjacent land holders, have carried

measurement on 3/6/2013 and prepared panchnama in presence of panchas. It was found that, defendant no. 1 has encroached to the extent of 5 R land of the suit property. Plaintiff has requested the defendants to vacate the said portion. But they did not listen to it. Lastly, on 25/6/2014 defendants and their agents tried to obstruct the peaceful possession of the plaintiff over the suit property. Hence, by the present application, the plaintiff has prayed for injunction against defendants to restrain them from causing obstruction to his peaceful possession over the suit property.

5. In response, defendants have filed their say and written statement below Exh. 18 and thereby denied all the contentions made in the plaint. It is their contention that, the plaintiff has intentionally mentioned wrong boundary of the suit property from the southern side. Defendant has never encroached upon 5 R land from southern side in gut no. 79. He has mentioned wrong boundary of the suit property from southern side in order to encroach upon the land of defendant no.1 in gut no. 315. There is no land situated at Western side of the suit property. There is land of defendant no. 1 towards western side to the extent of 5 acre 26 guntha. It is admitted that, defendant no.1 has purchased 3 acre 26 guntha land from southern side of gut no. 79. But she has never encroached upon the 5 R land as alleged by the plaintiff.

6. Plaintiff has contended that, defendant no.1 has encroached upon 5 R land. At the same time, he has prayed for injunction in respect of 81 R. This is self contradictory to the

pleadings of the plaintiff. Since many years, there is a stone bandh between gut no. 79 and gut no. 315. Hence, no question of encroachment arises. Moreover, there is a house constructed in stone, measuring 30x40 ft. in 3 acre 26 guntha land belonging to defendant no. 1. There is stone bandh which is 10 to 12 ft. away towards northern side of the said house.

7. Defendant no.1 is the owner and possessor of the land to the extent of 3 acre 26 guntha in gut no. 315, old survey no. 48/2 and defendant no. 2 is the owner and possessor of the land to the extent of 2 acre towards eastern side of the land of defendant no.1. During consolidation, the area of survey no. 48/2 is wrongly shown as 1 H 42 R instead of 5 acre 26 guntha. Plaintiff has tried to encroach upon 2 acre 5 guntha land towards Eastern side of gut no. 315 and tried to dispossess defendants from their land. Hence defendants have filed RCS bearing no. 44/2014 for declaration and injunction against the plaintiff. In the said suit, Court has directed the parties to maintain status quo. In order to save himself, he has filed present false and bogus suit. Hence, on these grounds, defendants have prayed to reject the application.

8. Heard. Ld. Advocate for the plaintiff. None present for defendants. Perused record. Following points arise for my determination, which are produced below alongwith my findings for the reasons stated herein as follows :

| No | Points                                                                    | Findings                 |
|----|---------------------------------------------------------------------------|--------------------------|
| 1  | Whether the plaintiff has made out a prima facie case against defendants? | No                       |
| 2  | Whether balance of convenience lies in his favour?                        | No                       |
| 3  | Whether irreparable loss will cause to him if injunction is refused?      | No                       |
| 4  | What order?                                                               | Application is rejected. |

### **REASONS**

#### **As to point no. 1 to 3 :**

9. In order to substantiate the claim, plaintiff has filed certified copy of 7/12 extract of gut no 79, sketch boundary map of gut no. 79, copy of panchnama, measurement drawn by TILR Badnapur and copy of measurement map vide list Exh. 4. He has also filed original measurement map dated 3/6/2013, and certified copy of 8A extract vide list Exh. 24. Defendants have not filed any document in their support.

10. It is the contention of the plaintiff that the suit property to the extent of 81 R is in his ownership and possession. He has filed 7/12 extract of gut no. 79. On it's perusal, his name of the plaintiff appears to the extent of 81 R. However, it is his contention that defendant no. 1 has encroached to the extent of 5 R from the southern side. Hence, considering these facts, it is clear that at present 76 R land is in the possession of the plaintiff. He has

prayed for injunction in respect of entire 81 R land. Therefore, he cannot claim injunction in respect of the entire suit property.

11. The fact of encroachment is denied by defendants. They submitted that, the plaintiff, by joining hands with concern authorities has prepared false measurement map. Plaintiff has filed the original map on record. It's truthfulness will come on record after scrutiny of evidence adduced by both parties. Therefore, at present, it cannot be decided whether the map is false or not.

12. It is contended by the plaintiff that defendants are causing obstruction to his possession over the suit property. On perusal of documents, there is no prima facie evidence which shows that defendants are causing obstruction to his possession over the entire suit property.

13. It is contended by the plaintiff that, he has tried to resolve the dispute by consulting with the respectable persons in the village. But he has not filed any affidavit of such person in his support.

14. On perusal of boundaries of 81 R land, remaining part of gut no. 79 in possession of defendant no.1 is shown towards Southern side. As per the boundaries of 5 R encroached portion, land of defendant no.1 from gut no. 315 is mentioned towards South. It is the contention of the plaintiff that, defendant no. 1 has land in gut no. 315 to the extent of 1 H 42 R towards southern side of the suit property. On the contrary, he has mentioned remaining

part of gut no. 79 in possession of defendant no. 1. Thus, there is a ambiguity in the boundaries mentioned by the plaintiff in respect of the suit property and 5 R encroached portion. Hence, it does not show the exact position and area of the suit proeprty. Under these facts and circumstances, it would not be proper to consider the prayer of the plaintiff in respect of granting injunction.

15. Thus, considering the facts and circumstances, as seen from the averments of the plaintiff, entire suit property is not in his possession. Therefore, it would not be proepr to grant the relief of injunction. Hence, it cannot be said that, the plaintiff has made out a prima facie case. Balance of convenience does not appear to be lying in his favour and it does not seem that, plaintiff would suffer irreparable loss if injunction is refused. Hence, for these reasons, point no. 1 to 3 are answered in the negative and in answer to point no. 4 following order is passed.

### **ORDER**

1. Application Exh. 5 stands rejected.
2. Costs in cause.

Sd/-

Date : 27/7/2017

S. D. Kamalakar  
Join Civil Judge (J.D.)  
Badnapur.