



R.C.S. No.240/2022

CNR No.MHLA130006782022

Gangaram+3 -Vs- Soudagar+5

**ORDER BELOW EXH.05**  
**(Dt.05.11.2022)**

1. The application is filed by the plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, seeking relief of temporary injunction against respondents restraining them from causing any damage to the suit property.

2. **Description of the suit property:** – Land Block No.371 admeasuring 09-H. 16-R., pot kharab 01-H. 16-R., situated at Village Wangdari, Tq. Renapur, Dist. Latur, is owned and possessed by the plaintiffs. Out of said land the defendants have encroached upon 01-H.20-R. The four boundaries of the encroached portion are –

Towards East	Land of plaintiffs.
Towards West	Land of defendants, i.e. Gat No.372.
Towards South	Manjra River.
Towards North	Portion of land Gat No.369 belonging to defendants

**Applicants case in short:** –

3. It is the contention of the plaintiffs that they are the owners in possession of land Gat No.371, admeasuring 09-H. 16-R., pot kharab 01-H. 16-R., situated at Village Wangdari, Tq.

Renapur, Dist. Latur. Land of defendants, Gat No.372, is situated towards Western side of the suit land. Since the year 2017 the defendants have gradually caused encroachment over the land of plaintiffs. Therefore, the plaintiffs got their land measured through the appropriate authority and thereupon it is found that the defendants have caused encroachment over 01-H.20-R. land of the plaintiffs. The plaintiffs requested the defendants to deliver possession of the encroached portion. Defendants, promised that they will return the land but they did not comply. Now the defendants are excavating minor mineral (morum) from the said encroached portion. The act on the part of defendants is causing damage to the suit land. The defendants are also grazing their cattle in the suit land. Hence, they are required to be restrained from such an act.

4. It is further contended by the plaintiffs that the plaintiffs are the owners in possession of the suit land. The possession of the defendants is illegal and it amounts to an encroachment. The plaintiffs being owners of the suit property, have prima facie case and balance of convenience also lie in favour of the plaintiffs. In case the defendants are not restrained from causing damage to the suit property, the plaintiffs will suffer irreparable loss. Hence, prayed to grant temporary injunction.

5. Suit summons duly served on all the defendants. Defendant No.2 did not appear. Hence, the suit as well as the application is proceeding ex-parte against him. Defendant Nos. 1,3 to 6 filed their written statement at Exh.29 and by filing pursish at Exh.33, they adopted their W.S. at Exh.29 as their say

to this application.

6. The defendants have denied all the allegations of the plaintiffs. It is the main contention of the defendants that the description of the suit property given by the plaintiffs is not correct. It is specifically pleaded that the land Gat No.371 belongs to several owners. The plaintiffs are not the sole owners of the entire land in Gat No.371. As such the suit is improper and not tenable. It is further contended by the defendants that the lands of defendants Nos.1, 4 to 6 are not adjacent to the land of plaintiffs. Therefore, there is no substance in the contention of the plaintiffs that these defendants have caused encroachment over the suit land. The defendant No.3 also has not encroached upon the land of the plaintiffs. It is further contended that the plaintiffs have got their land measured behind the back of these defendants. Notices were not given to these defendants as well as the other persons who own land in said Gat No.371. As such the measurement, if any made is illegal and it is done with the help of officers of Land Records. As such, any report, as claimed by the plaintiffs is bogus. The plaintiffs have no cause of action to file this suit. The plaintiffs have no prima facie case and balance of convenience also does not lie in favour of the plaintiffs. The defendants have not caused any encroachment. Therefore, no injunction as prayed by the plaintiffs could be granted. Prayed to reject the application with costs.

7. On the basis of rival pleadings of the parties following points arise for my consideration. Findings against them are

recorded for the reasons discussed below.

**POINTS FOR DETERMINATION**

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether applicants have prima facie case in his favour?	... No.
2	Whether the balance of convenience lie in favour of applicants?	... No.
3	Whether applicants will suffer irreparable loss if relief of injunction is not granted in their favour?	... No.
4	What order?	... Application is rejected.

**8.** The contents of application are supported by an affidavit of the applicant. The applicant has placed on record the copy of the Map, which is prepared by the cadastral surveyor after the suit property is measured by him and the copies of 7/12 extract and extracts of 8-A.

**REASONS**

**Point Nos.1 to 3**

**9.** Heard, Shri. N. P. Gaikwad, learned advocate for the applicants and Shri. V. A. Digule, learned advocate for the respondents. Perused documents filed by both the parties.

**10.** The present suit is filed by the plaintiffs for removal of

encroachment and recovery of possession. It is the contention of the plaintiffs that they are the owners of the suit property. The description of the suit property is given by the plaintiffs in paragraph Nos.02 and 04 of the plaint. According to the plaintiffs, the total area of the suit land, Gat No.371 is 09-H. 16-R. It belonged to them and the defendants have caused encroachment to the extent of 01-H. 20-R.. The defendants have challenged the very description of the suit property. As per the defendants the plaintiffs are not the owners of entire land in Gat No.371. There are other persons, who occupy or own portions of land Gat No.317. So, basically it has to be seen that whether the plaintiffs are the owners of the entire land Gat No.371. The copies of 7/12 extracts of the suit property are on record. Extracts of 8-A are also placed on record by the plaintiffs themselves. **11.** After going through the said documents, it becomes clear that there is total 10-H. 32-R. land in Gat No.371. The extract of 7/12 further makes it clear that names of other person are also recorded in the said 7/12 extract. This clearly means that the plaintiffs are not the owners of entire land Gat No.371.

**12.** The plaintiffs have not given the four boundaries of their total land. they have only given the boundaries of land admeasuring 01-H. 20-R. The map is placed on record by the plaintiffs, however, at this stage of the matter, said Map is of no use for the plaintiffs. The plaintiffs have to, prima facie show the factum of ownership of suit land as well encroachment by defendants. However, plaintiffs failed in that regard. Hence, as

a result, it is clear that the plaintiffs have no prima facie case and balance of convenience also does not lie in their favour. In absence of such prima facie proof, it cannot be assumed that the defendants are causing any interference into the ownership and possession of the plaintiffs over the suit land. Hence, point Nos.1 to 3 are answered in the negative.

**As to point No.4**

**13.** The plaintiffs have failed to make out prima facie case and balance of convenience also does not lie in favour of the plaintiffs. As such, the plaintiffs will suffer no loss, in injunction, as prayed by them is not granted. Hence, for the reasons discussed above and in view of the findings against point Nos.1 to 3, in answer to point No.4 following order is passed.

**ORDER**

- (1) Application is rejected.
- (2) Cost in cause.

(Pronounced in open Court)

Date :- 05/11/2022

(R.B. Hanwate)

Civil Judge (Jr, Dn.), Renapur, Dist. Latur.