

MHLA140012512019



ORDER PASSED BELOW EXH. 27

This is a suit for measurement, fixation of boundaries and perpetual injunction. Through this application by virtue of Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908, defendant no. 9 is praying for interim injunction against the plaintiffs and the T.I.L.R. AUSA, that they be restrained from fixation of boundaries in Gut No. 115 and causing any interference to his peaceful possession in his land in Gut no. 116. The subject matter of the suit is the agricultural land 2 hector 72 R in and out of Gut no. 115 and 52 R in and out Gut no. 116 situated at village Fattepur, Taluka AUSA, District Latur. The property mentioned supra is more particularly described in para 2 of the plaint.

The shorn of superfluities giving rise the present application are as under:

02. That, he is the owner and in possession of the land in Gut no. 116. He resisted the plaintiff's claim by filing his W.S. vide Exh. 24. He contended that he is the adjacent land holder of the suit property. The plaintiffs filed the present suit for measurement, fixation of boundaries and perpetual injunction

which is *sub-judice*. However, plaintiffs applied for measurement of the suit property without permission of the Court. That, the surveyor measured the land in absence of some of the parties. That, the surveyor is going to fix the boundaries of the land in Gut no. 115 soon. Further, the plaintiffs are intending to encroach upon the defendant's land by joining hands with the surveyor and without following the procedure. Therefore, defendant no. 9 prayed that the plaintiffs and T.I.L.R., AUSA be restrained from fixing the boundaries of Gut no. 115 and from obstructing his peaceful possession.

03. Per contra, plaintiffs have resisted the application by filing their say vide Exh. 34. It is the reprisal of plaintiffs that, defendants have no concern with the suit property Gut no. 115. It is the contention of plaintiffs that in absence of any counter claim defendant's application is not maintainable. Further, the injunction as prayed cannot be granted against the T.I.L.R. AUSA in his absence and without issuing notice to him. The plaintiffs have given undertaking in their say that they would not dispossess defendants without following due procedure of law. Therefore, it is prayed that the application being not maintainable be rejected threshold.

04. From the consideration of facts and pleading, following points arise for my determination and I have recorded my findings against each of them for reasons enumerated

below:-

SR.NO.	<u>POINTS</u>	<u>REASONS</u>
1.	Whether defendant no. 9 has made out <i>prima-facie</i> case ?	No.
2.	Whether the balance of convenience is in favour of defendant no. 9 ?	No.
3.	Whether defendant no. 9 will suffer irreparable loss in the event of refusal of temporary injunction ?	No.
4.	What order?	As per final order.

REASONS

AS TO POINTS NO. 1 TO 3 :-

5. As to point no. 1 to 3 are interlinked with each other and hinge upon the same pivotal, hence, in order to maintain the flow of discussion, all the points are clubbed together for discussion.

6. It is the contention of defendant no. 9 that the present suit for measurement, fixation of boundaries and injunction is pending, however, the plaintiffs applied for measurement to the T.I.L.R. office AUSA without permission of

this court. It is further contended that the surveyor measured the land and prepared panchnama in absence of some of the parties. It is further contended that the surveyor is going to fix the boundaries of the suit property Gut no. 115 soon. Furthermore, the plaintiffs are intending to encroach upon the defendant's land by joining hands with the surveyor.

7. The learned advocate for defendant relied upon the decisions in *Tamminedi Ramkrishna and other Vs Smt. N. Jayalaxmi*, M.F.A.No. 102788/2020, *Sugandha bai Vs Sulu bai and others*, AIR 1975 Karnataka 137, *Smt. Indrawati Devi Vs Bulu Ghosh and other*, AIR 1990 Patna 01, *Manoharlal Chopra Vs Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 Supreme Court 527. The learned advocate for the defendant would submit that in view of Order 39 Rule 01(a) his application is maintainable and legal.

8. The plaintiffs contention is that the defendants application for temporary injunction is not maintainable in absence of his counter claim. They have given undertaking in their say Exh. 34 that they will not dispossess defendant on the basis of the measurement. Moreover, they contended that such kind of injunction can not be granted in absence of T.I.L.R.

9. As far as the maintainability of this application is concerned, in view of Order 39, Rule 01 (a) of the C.P.C. any party in dispute can claim temporary injunction if he made out

his case according to sub rule a, b, c. Therefore, in my considered view the application is maintainable.

10. The injunction is prayed against the surveyor/ the T.I.L.R. AUSA, who is not made party to the suit. Therefore, in absence of the T.I.L.R. injunction to restrain him from fixing the boundaries cannot be given. In the circumstance stated about the defendant ought to have made objection against the alleged measurement before the appropriate authority. I am to state that *prima-facie* the defendant is failed to produce the record of measurement and panchnama of the suit property. Therefore, merely on the basis of words it cannot be held that the measurement is erroneous and so injunction cannot be given.

11. Had it been the really case of defendant that the T.I.L.R. has not issued notice of measurement to him, it is open for defendant to file objection before the T.I.L.R. Indeed, there is no bar to parties to apply for measurement in the T.I.L.R. office when the suit for measurement and injunction is pending in the Civil Court. Therefore, the temporary injunction to restrain the T.I.L.R. from performing his duty can not be granted.

12. The defendant failed to establish the *prima-facie* case in his favour. He failed to establish the balance of convenience in his favour. If the boundaries in Gut no. 115 will be fixed on the basis of measurement by the surveyor, no irreparable loss would be caused if there is no encroachment at the instance of

defendant no. 9. Therefore, unhesitatingly I record my findings in negative against point no. 1 to 3 and in answer to point no. 4, I reckon to pass following order:-

O R D E R

1. Application at Exh. 27 is rejected.
2. Costs in cause.

(*Dictated & pronounced in open Court*)

Ausa

Date:- 21/10/2023

(P.D.Kolekar)

2nd Jt. Civil Judge J.D.,Ausa.