

Order below Exh. No. 05 in R.C.S.No.194/2017

(Hanmant Vs. Madhukar)

(Dated 27.04.2018)

Plaintiff filed this suit for recovery of possession and perpetual injunction, wherein he is seeking temporary injunction to restrain defendants, their agents and anybody claiming through them from making any illegal construction over the suit land of plaintiff as described in para. no. 5 of the plaint till final disposal of suit.

2. On the other hand defendant no. 1 to 4 filed their W.S. and say to this application vide exh. 28. Defendants denied the claim of plaintiff. According to them, they are making construction over their own plot so plaintiff has nothing to do with construction. Hence they prayed for rejection of this application.

3. Considering submissions by both the parties, following points arise for determination I record my findings as follows.

	<u>Points</u>	<u>Findings</u>
1	Whether any prima facie case is made out ?	Yes.
2	In whose favour, the balance of convenience lies ?	In favour of the plaintiffs.
3	To whom, irreparable loss would be cause ?	To the plaintiffs.
4	What order ?	The application is allowed.

REASONS**As to Point Nos.1 to 4 :**

4. According to plaintiff, he and defendants are resident of same village. Defendant no. 1 to 3 are the northern side neighborer amongst the other northern neighborers of plaintiff's land. Defendant no. 2 is

wife, Defendant no 3 is son and Defendant no 4 is the nephew of defendant no 1. The father of plaintiff by name Ashok Dhondiram Badde was purchased the land Adm. 2 H. 01 R. including potkharab 02R land out of land Gat no. 11/2 situated at Village Tiwatghal Tq. Chakur, Dist Latur. The said land is purchased in the name of plaintiff under the guardianship of Manikrao Shinde by Registered Sale deed day book no. 3030/1993 dated 15.12.1993 for valuable consideration.

5. The plaintiff is the owner and possessor of the above land which is bounded as Towards east – land of Pundlik Gopal Gaikwad, Towards West – Road, Towards South – Land of Sanjay Matlakute and Towards North – Housing area of Gram Panchayat village Tiwalghat in same gut no. and land of Tulshiram Matlakute. After purchasing above land plaintiff mutated his name over the 7/12 extract and become absolute owner of land till May 2014. Plaintiff took various corps in the above land. In the month of May 2014, defendant no. 1 to 3 gradually started encroachment over the above land from the northern side to the extent $\frac{1}{2}$ R. which is bounded as Towards East – land of Plaintiff, Towards West – Road, Towards South – Land of Plaintiff and Towards North – The plot of defendant no. 1. This $\frac{1}{2}$ R. land is the Suit Property.

6. The defendants started encroachment over the suit land from May 2014. Plaintiff and his father requested them not to encroach on suit land adm. $\frac{1}{2}$ R. Land which is owned and possessed by plaintiff. At that time defendants admit the encroachment and assured to vacate the suit land but they again started encroachment gradually. In spite of repeated request of plaintiff, defendants did not listen and continued the encroachment.

7. On 28.11.2017 defendants started to digging the dug for construction of basement over the suit land. Plaintiff again requested

but defendants flatly refused and continued the illegal act. So on 28.11.2017 the father of plaintiff filed written complaint to P.S.Chakur and on dated 29.11.2017 at B.D.O. and Panchayat Samiti Chakur. He also filed complaint at Gram Sevak of Gram Panchayat Tiwalghat on dated 4.12.2017. But none of the authorities took any action for preventing illegal act of defendants. Consequently defendants makes illegal construction up to land level without any permission of Gram Panchayat Tiwalghat. In spite of repeated requests defendants did not stop illegal construction, so plaintiff filed this suit. As prima facie case is made out by plaintiff with documentary evidence and balance of convenience lies in his favour and irreparable loss caused to him, he prayed for interim injunction till final decision of suit.

8. Defendants resisted the application on the ground that, the claim of plaintiff is false and imaginary. Plaintiff has no concerned with defendants G.P. House no. 121 adm. East-West 100 feet and North – South 35 feet. This plot is allotted to defendants by Gram Panchayat Tiwalghat prior to 27 years i.e. in the year 1990. Immediately after allotment, defendant no. 1 and 2 constructed G.P. House no. 121 with mud and stone.

9. Presently in the month of August 2017, defendants demolished old construction and started new construction with sand, cement and bricks. The basement of four corners have been completed and construction of upper portion of house is started. Defendant no. 1 and 2 kept open portion of 5 feet from southern side and photographs clearly shows that after basement cement pillars i.e. poles have been erected. The poles have been erected in the year 2014 in presence of Panchas namely Nandkumar Pawar, Tukaram Matlakute and Balaji Ramchandra Patil and plaintiff. So plaintiff has no cause of action. Only taking false shelter of alleged measurement dated 25.06.2014 plaintiff filed this

false suit. The alleged measurement has not issued to the defendants and also these defendants were not party of R.C.S. no. 115/2011. As the suit of plaintiff is not maintainable, defendants prayed for dismissal of suit with compensatory cost of Rs. 25,000/-.

10. Plaintiffs filed copy of written complaint dt. 28.11.2017 to P.S.Chakur, at B.D.O. and Panchayat Samiti Chakur dt. 29.11.2017 and at Gram Sevak of Gram Panchayat Tiwalghat on dt. 4.12.2017. He also filed copy of 7/12 extract of land Gat No. 11/1 and 11/2 and the copy of sale deed no.3030/1993 showing his possession of suit property. On the other hand defendants filed affidavit of Harishchandra Govind Yedle and Madhav Maroti Matlakute, Electric Bill of December 2017 and Tax receipt dated 16.09.2016, Copy of 8A of House G.P.No, 121 for the year 2009-10 issued on dated 01.12.2017 and various five photographs along with bill dated 22.03.2018. Defendants relied upon **Kashimath Sansthan and Anr. V/s Srimad Sudhindra Thirtha Swamy 2010 (1) Mah L.R. 70 (SC)** contending that if the party fails to prove prima facie case to go for trial, irrespective of balance of convenience and irreparable loss, it is not open to court to grant injunction in favour of such party.

11. Heard both the parties at length. Perused record and documents filed by both the parties. Defendants admitted that they are adjoining neighbour of plaintiff from the southern side i.e. Northern side of the suit property and fact of making construction of defendants house. The possession of land Gat no. 11/2 by plaintiff and house no. 121 by defendants are not disputed. As per plaintiff, defendants gradually made encroachment since 2014 upon suit land. Vide pursis Exh. 38, plaintiff specified the encroached portion as south north east side 9 ft. west side 4 ft and east – west 100 ft. i.e. $\frac{1}{2}$ R. But defendants denied that they encroached upon suit land i.e. $\frac{1}{2}$ R land of plaintiff.

12. Defendants contended that they only making reconstruction upon their own plot adm. 100 X 35 feet. The tax receipts and Namuna 8A showing area of defendants house i.e. 100 X 35 feet. But the area of actual construction is not mentioned by defendants. Upon asking during arguments they submitted that the construction is adm. 100 X 35 feet. If the construction is 100 X 35 feet then the poles shown by defendants is near about 3 to 5 feet from actual construction of defendants. These photographs are filed by defendants themselves. Out of 14 photographs defendants only filed 5 photographs.

13. Defendants only filed some affidavits to show that they did not made any encroachment upon suit land. But both the parties admitted that RCS no. 115/2011 is pending in Joint CJJD Court Chakur. Though defendants are not parties to that suit. But according to plaintiff, in that suit, T.I.L.R. was appointed for measurement of land Gat no 11/1 and 11/2. The T.I.L.R. filed measurement map showing the encroachment of Gat no 11/1 over Gut no. 11/2 near about 3R in L shape. After hearing the parties vide order below Exh.34, the record of R.C.S. no. 115/2011 is called only for inspection of measurement map filed by T.I.L.R.

14. Perusal of record of R.C.S. no 115/2011 shows that plaintiff filed declaration and possession and for perpetual injunction against Mohan Kamble and others. Vide order below Exh. 57 TILR Chakur was appointed for making local investigation and filed report. TILR filed measurement map by letter dated 09.09.2014 vide Exh 64. But due to some technical difficulty the corrected measurement Map is filed by TILR on dated 31.10.2014 vide Exh 65. The measurement map filed by TILR vide letter Exh. 65 prima facie shows encroached area up to 3 R land in 'L' shape upon land of plaintiff i.e. on Gat no. 11/2. Some portion of this encroached area is the suit land in this suit.

15. Though defendants are not parties to that suit, this fact does not make this suit as false one, at this interim level. Because defendants house no. 121 is came under Gat no. 11/1 and he is adjoining member of land gat no 11/2. Moreover the question whether defendants are not made party to R.C.S. no. 115/2011 and whether concerned T.I.L.R. served notices to these defendants or not is not determinable at this interim level. Though the map filed by TILR in R.C.S. no. 115/2011 is not exhibited yet, this does not mean we can not see the document prepared by local authority at this primary level. This documents is more trustworthy than the affidavits filed on record by defendants.

16. Moreover, though defendants contended that they are residing on house no. 121 since last 27 years, but the document like electric bill shows that electric connection obtained in the year 2011. the Tax receipt shown year 2016 Namuna 8A obtained on 01.12.2017 for the year 2009-10. Hence, residence of defendants since last 27 years and demolishing old construction in August 2017 is not prima facie proved. Hence the submission of plaintiff seems more trustworthy than defendants.

17. Hence in view of above discussion, prima facie case is made out by plaintiff so the facts of citation relied by defendant is different from this case. As prima facie case is made out by plaintiff in my humble opinion, the above citation is not applicable to this case with due respect. Looking to the documents regarding construction and possession filed by both the parties and alleged encroachment, the balance of convenience lies in favour of plaintiff. The various complaints filed by plaintiff, shows the dispute between parties and they fought by tooth and nail. If defendants could not be restrained from making further construction on disputed $\frac{1}{2}$ R area it would cause irreparable loss to plaintiff and will cause multiplicity of proceedings.

18. Moreover, this is the primary stage of proceeding. Sufficient evidence is yet to come before the court. The court is not in a position to settle the right between the parties. The court is acted upon materials placed by the parties before court. All these points can be well adjudicated after going through merits of the case. Now at this interim level, the court only relying on the submission made by the plaintiffs and documents filed by them. No hardship will be cause to the defendants, if temporary injunction is granted in favour of plaintiff. Hence, I answered of issues no. 1 in the affirmative and issue no. 2 and 3 in favour of plaintiff and in answer to issue no. 4 I pass following order.

ORDER

1. Application is allowed.
2. Defendants, their agents and anybody claiming through them are restrained from making any further construction upon disputed the $\frac{1}{2}$ R land till final disposal of the suit.
3. Cost in cause.

Date: 27/04/2018

(Y.D.Koinkar)
Civil Judge, J.D., Chakur