

ORDER BELOW EXH. 5**Baburao and others V/s Uttamrao and others**

Read the application, affidavit and say filed by respondents. Perused record. Heard both the Counsels at length.

2] This is a suit for declaration and injunction, wherein application for temporary injunction is filed. Case of the applicants is that, they are the owner of land Block No. 868 and respondents are the owners of land Block No. 869 situated at village Kasbe Sukene, Tal. Niphad, Dist. Nashik. Their lands are adjacent to each other. Land of the applicants is at Northern and Western side of the land of respondent's. There is a common bandh running towards East-West and North-South in between their land. Applicants have cultivated grapes garden in their land in the year 1970. The angles were erected and those angles are as it is since 1970 till date. Therefore, question of encroachment at the hands of applicants over the land of respondents is highly impossible.

3] The applicants had filed suit bearing No. 197/2000 against the previous owner of the land of respondents for injunction. In that suit, respondents appeared and resisted suit and application by filing written statement alongwith counter-claim. Both the parties to that suit, failed to prove their respective contentions and the suit

and counter-claim also came to be dismissed. Meanwhile, present respondents approached to T.I.L.R., Niphad. Got their land measured and submitted proceedings before Hon'ble Deputy Collector for removal of encroachment mentioned in the map prepared by T.I.L.R. Niphad. Encroachment application bearing NO. 78/2016 came to be decided in favour of respondents on the basis of order passed by Hon'ble S.D.O., Niphad. The respondents are trying to take the possession of 14 R land from the present applicants. Hence, the application under consideration is filed.

4] By way of filing say at Exh. 13, application is resisted. According to respondents, wrong four boundaries and description of property is given by the applicant. They have denied all the contention of the applicant in the application at Exh. 5. Further, their contention is that, suit is barred by Law of limitation as well as res-judicata and estoppel. In the year 2016, applicants have encroached over their land by demolishing the common bandh in between their land. Complaints were filed to Police Station and Talathi. But, they have advised to got their land measured. Respondents, by filing application, got their land measured in the year 2016. It was transpired during measurement that, 14 R land of respondents, are under cultivation of the owner of land Block No. 868 i.e. of the applicants. On the basis of that map encroachment is bearing No. 78/2016 was filed. It is decided in favour of respondents

and therefore, if the application under consideration is allowed, it would amount to granting stay order to the execution of the order passed by Hon'ble Deputy Collector, Niphad and lastly prayed to reject the application.

5] Considering the rival pleadings of the parties, following points are framed and my findings thereon with reasons are as under

SR. NO.	POINTS	FINDINGS
1]	Does the applicant prove that, they have prima facie case ?	Affirmative.
2]	In whose favour the Balance of Convenience lies ?	Applicants.
3]	To whom the irreparable loss will be caused, if temporary injunction is granted ?	Applicants.
4]	What order ?	Application allowed.

REASONS

AS TO POINT NO. 1 TO 3 :-

6] These three points are interlinked, therefore to avoid the repetition I have discussed these three points together.

7] Case of the applicant is for declaration and injunction. Applicants are owner of land Block No. 868 and respondents are owner of land Block No. 869 situated at same village Kasbe Sukene, Tal. Niphad, Dist. Nashik. Applicants are seeking injunction, by way of application under consideration that, respondent should not take possession of 14 R land from the applicants. However, respondents are claiming possession of 14 R land on the basis of measurement map i.e. M.R. No. 5055/2016.

8] Ownership of their respective lands and possession thereof are not in dispute. Copy of order passed by Hon'ble S.D.O., Niphad is filed on record. Careful reading of that order dated 21/09/2018 shows that, it is based on the measurement map bearing No. 5055/2016. It could be seen from that map that, 14 R area out of the land of respondents i.e. block No. 869 is shown in possession of the owner of land block No. 868 i.e. applicants. Hon'ble S.D.O., Niphad, while passing that order placed reliance on that measurement map only. It has been held that, the applicants are in possession of the 14 R land of respondents and therefore, the present respondents are entitled for the possession of 14 R area from the present applicant.

9] It is pertinent to note here that, it is settled position of Law that to ascertain the encroachment if any, joint measurement of

both the lands is necessary. Here in the case in hand, respondents are seeking possession of the 14 R land from the applicants on the basis of order passed by Hon'ble S.D.O., Niphad the present map prepared by T.I.L.R. Niphad is the base of that order. However, bare perusal of that map, it could be seen that, no joint measurement was made and only the land of respondents was measured. Under these circumstances, if the application under consideration is not allowed, the Revenue Authority would execute the order of Hon'ble S.D.O., Niphad. Unless, there is a joint measurement of land Block No. 868 and 869, owned by applicants and respondents it would not be proper to execute the order of Hon'ble S.D.O., Niphad. In absence of joint measurement of both the lands, the contention of respondent that, their 14 R area out of land Block No. 869 is in possession of the present applicant cannot be accepted. In my view, applicants have proved prima facide case in their favour. Balance of convenience is also lies in favour of applicants. Hence, if the application is not allowed, irreparable loss will cause to the applicants only. Hence, in view of above discussion, I answer point No. 1 to 3 accordingly.

AS TO POINT NO. 4 :-

10] In view of answer to point No. 1 to 3 following order is passed.

Regular Civil Suit- 03/2019
(CNR No.MHNS13-000078-2019)

ORDER

1. Application Exh. 5 is allowed.
2. Respondents are hereby temporarily restrained from taking possession of 14 R land from the applicants and further they are restrained from obstructing the peaceful possession of the applicants over land Block No. 868 by any means till the decision of the suit.

Date :- 09/04/2019.

Sd/-xxx
(Vijay C. Gawai)
Civil Judge Junior Division,
Pimpalgaon (B), Tal. Niphad.