

MHNS130018972021



R.C.S./76/2021
Ambadas Gopal Gaikwad
Vs.
Kartik Jayram More

ORDER BELOW EXH.5 IN
REGULAR CIVIL SUIT NO.76/2021

01] The plaintiffs have filed this application for interim injunction for restraining defendants from disturbing plaintiffs possession over the suit properties.

Plaintiffs' case is as follows-

02] Gat No.126/1 to Gat No.126/5, situated at village Kokangaon, Tal.Niphad, more particularly described in plaint para No.1, are subject matters of this suit. (hereinafter referred to as "*the suit properties*").

03] The plaintiffs are owners of the suit properties. Initially the suit properties were part of Gat No.126. Thereafter, those were sub-divided into 5 parts. The plaintiffs also own Gat No.125, which is adjacent to eastern side of Gat No.126. The plaintiffs have laid pipeline from Gat No.125 since many years for irrigating the suit properties. The defendants are owners of Gat No.127, which is adjacent to western side of the suit properties. There is common bandh between the properties of the plaintiffs and defendants. More than 50 years old trees are standing on the said bandh. Both the parties have installed angles and wires for grape orchard. Therefore, there was no question of causing encroachment into each other's properties.

However, the defendants got measured their properties vide MR No.3767/2014, without knowledge of the plaintiffs. 0.32R area has been shown to be encroached by the plaintiffs. The said measurement was done without measuring the suit properties. The said measurement is illegal and incorrect. The plaintiffs have been cultivating the suit properties for more than 40 years as owners openly without any interruption. Therefore, the defendants have lost their right to claim possession the encroached area. Hence, the defendants may be restrained from disturbing the plaintiffs' possession over the suit properties till final decision of the suit.

SAYS-

04] Defendants filed their written statement and say (Exh.28) and contested the suit and this application. According to them, there was north-east common bandh between the suit properties and Gat No.127. However, the plaintiffs have destroyed the said bandh and committed encroachment from western side of the Gat No.127. The defendants opposed the plaintiffs, but they did not pay heed. Notice was issued to plaintiffs and defendants for measurement vide MR No.3767/2014. The Surveyor has measured and shown boundaries of Gat No.127. Area of 0.32R has been encroached by the plaintiffs over the Gat No.127. Sub-divisional officer, Niphad, ordered the plaintiffs to hand over possession of encroached area. The plaintiffs availed remedy before Additional Collector and, thereafter, Additional Commissioner, however

could not succeed. The suit came to be filed in order to avoid handing over possession of encroached area. The plaintiffs have not demanded re-measurement of the properties. Therefore, they are not entitled to interim injunction. Hence, application may be rejected.

05] Following points arise for my determination and I have recorded my findings thereon with the reasons as under :-

No.	POINTS	FINDINGS
(1)	Whether prima facie case lies in favour of the plaintiffs ?	<i>...Negative</i>
(2)	Whether balance of convenience lies in favour of the plaintiffs ?	<i>...Negative</i>
(3)	Whether irreparable loss would be caused to the plaintiffs if injunction is refused ?	<i>...Negative</i>
(4)	What order?	<i>As per final order.</i>

ARGUMENTS-

06] Learned advocate for the plaintiffs argued that the plaintiffs have withdrawn the appeal before Additional Commissioner and have filed this suit under Section 138(4) of the Maharashtra Land Revenue Code, 1966, (for short "MLRC"). The defendants are trying to eject the plaintiffs on the basis of inaccurate map. No common measurement was carried out. Notices were not issued to the plaintiffs prior to measurement. No permanent mark was fixed for measurement. Accuracy of map will be decided after the trial.

07] It was further argued that angles and wires are

standing in properties of both the parties since long. Fixed and constructed water outlet are installed in the suit properties. Old aged trees are standing on bandh between the parties. Photographs are filed to show the said situation. Therefore, it is highly impossible to cause encroachment in each other's properties. The plaintiffs have proved prima facie case.

08] It was further argued that grape crop is standing in the suit properties. The plaintiffs will suffer irreparable loss, if injunction is refused. On the other hand, no hardship will be caused to the defendants, if injunction is granted.

09] Learned advocate for the defendants argued that the plaintiffs were aware and present at the time of measurement. Enquiry was conducted before the Sub-divisional officer and the appeal was heard before the Additional Collector. The plaintiffs' objections did not sustain before the Revenue Authorities. Plaintiffs' objections are meritless. The defendants are pursuing legal remedy since 10 years for their own land. The plaintiffs have filed this suit after delay of 10 years. The defendants are kept out of income of encroached area. The great hardship will be caused to the defendants, if injunction is granted.

10] It was further argued that the plaintiffs have also taken plea of adverse possession in this suit. They have impliedly admitted that they are in possession of defendants' property. The defendants are following due process of law for obtaining possession. Therefore, the plaintiffs are not entitled to

relief of injunction.

DISCUSSIONS-

AS TO POINT NO.1 :-

11] Injunction is an equitable relief. The parties have to prove prima facie case, balance of convenience and irreparable loss in order to get an order of injunction. The prima facie case does not mean a case having strong possibility of win. Prima facie case means there should be sufficient material on record to go to trial. There must be triable issues involved in the suit.

12] The prima facie case has to be determined with reference to the relief claimed in the suit. This suit is filed under Section 138(4) of the MLRC. Therefore, I find it necessary to refer the said provision. It is as follows-

Section 138- Effect of settlement of boundary-

(1) The settlement of a boundary under any of the foregoing provisions of this Chapter shall be determinative— (a) of the proper position of the boundary line or boundary marks, and (b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

(2) Where a boundary has been settled as aforesaid, the Collector may at any time summarily evict any land holder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

(3) An order of ejectment under sub-section (2) shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Where any person has been ejected or is about to be ejected from any land under the provisions of sub-section (2), he may,

within a period of one year from the date of the ejectment or the settlement of the boundary, institute a civil suit to establish his title thereto : Provided that, the State Government or the Collector, or any revenue or survey officer as such, shall not be made a party to such suit.

(5) Where a civil suit has been instituted under sub-section (4) against any order of ejectment, such order shall not be subject to appeal or revision.

(6) The Collector may at any time make an order for redistribution of land revenue which, in his opinion, should be made as a result of the decision of the appeal or revision, or as the case may be, the suit, and such redistribution shall take effect from the beginning of the revenue year following the date of the order.

13] The following facts are admitted to both the parties in this suit-

Measurement of Gat No.127 was carried out vide MR No.3767/2014 on application of the defendants. Area of OH 32R has been shown to be encroached by the plaintiffs over Gat No.127. SDO ordered ejectment of plaintiffs from encroached area. The plaintiffs challenged order of SDO upto the Additional Commissioner, Nashik. The plaintiffs withdrawn the last appeal and filed this suit under Section 138(4) of the MLRC.

14] The plaintiffs have sought declaration that area shown as encroached is owned by them and order passed by SDO is illegal. Further relief of permanent injunction is sought.

15] It is clear from Sub-section (1) of Section 138 that the settlement of a boundary under Chapter IX, Boundary and Boundary Marks shall be determinative of the proper position of

the boundary line or boundary marks, and (b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings. Therefore, only Revenue Authorities under the MLRC are empowered to settle boundary marks.

16] Remedy of appeal and revision under MLRC has been provided against settlement of boundaries. Section 138 (4) of the MLRC provides remedy of filing Civil Suit to establish title. After filing the civil suit, remedy of appeal or revision under MLRC is barred. Revenue Authorities cannot be made parties to the suit.

17] After perusal of scheme of Section 138 of the MLRC it appears that remedy of civil suit is provided to establish title, and not for challenging the proceeding of settlement of boundaries or summary eviction by Revenue Authorities. In other words, the civil suit can be filed for establishing title over the disputed area. The civil suit is not meant to challenge proceeding before Revenue Authorities. Civil Court cannot seat in appeal and decide propriety of order of settlement of boundaries.

18] In the present case, in order to establish title of the plaintiffs over the disputed area, they ought to have carried out measurement of the suit properties. In absence of such measurement, it is difficult to ascertain that the plaintiffs are owners of disputed area.

19] The plaintiffs have contended that long standing crops and trees makes possibility of encroachment improbable. However, the defendants have placed on record map prepared by the Surveyor. There is prima facie evidence on record to show that the plaintiffs have encroached upon the disputed area, which belongs to the defendants.

20] The plaintiffs have taken plea that they have been in possession of disputed area as owner openly more than 40 years. The said statement is followed by further statement that the defendants have lost right to claim possession of the encroached area. The combine reading of both the statements, it is clear that the plaintiffs have taken plea of adverse possession. The said plea indicates that they have admitted title of the defendants over the disputed area.

21] In this suit, the plaintiffs have not measured their suit properties. Therefore, prima facie case is not made out to show title of the plaintiffs over the disputed area. The defendants are pursuing legal remedy for taking possession of the encroached area. The said proceeding is summary proceeding. Granting temporary injunction would amount to indirectly staying proceeding of Revenue Authorities, which is not authorized to Civil Court by the MLRC. The purpose of prescribing mode of summary eviction will be frustrated if injunction is granted. Therefore, the plaintiffs failed to prove prima facie case. Hence, I answer point No.1 into negative.

AS TO POINTS NO.2 & 3 -

22] The plaintiffs have remedy of establishing their title and claim possession of disputed area, if they are summarily evicted. The defendants are following due process of law. Balance of convenience is not in plaintiffs' favour. On the other hand, the defendants have been following due process of law since 2015. Irreparable loss will be caused to the defendants, if injunction is granted. Therefore, I answer points No.2 and 3 into negative.

AS TO POINT NO.4 -

23] In view of negative findings of points No.1 to 3, the plaintiffs are not entitled interim relief of interim injunction. In view of above discussions, application deserve to be rejected. Hence, I pass following order.

ORDER

- i.** Application (Exh.5) is hereby rejected.
- ii.** Costs in cause.

Sd/-

(A. J. Patil)

Dated : 12/12/2025

Civil Judge, (Jr. Dn.)
Pimpalgaon (B).

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