

MHNS140010792019



(Order on application for temporary injunction)

ORDER BELOW EXH.5

This is an application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The suit is for declaration and perpetual injunction.

02. Description of suit property :

Property No.	Ad-measuring area	Village
Gat no. 12	1 H. 7 R. + 0.01 P.K.	Pade Tal- Dindori, Dist- Nashik

Aforementioned property is herein after referred as suit property.

03. Plaintiff's case in short :

The plaintiff is owner of suit property gat no. 12. He cultivate the suit land, he cultivate crop of grapes since of 12 to 15 years. They angle for grapes is standing is the suit property. There is a band between suit property and gat no. 13 since from many years. The defendant no. 1 to 3 approaches to Sub Divisional Officer, Dindori and file application for removal of encroachment. On 28/04/2016 measurement was done and the boundary marks were fixed as per the measurement there is encroachment of area admeasuring 11 R. by gat no. 12 i.e suit property. In fact, the defendant has no any concern with the 11 R. area which is belonged to suit property. However, the defendant no. 1 to3 trying to get that 11 R. area by using order in encroachment case no. 174/2017. The measurement is not legal also the order passed for removal of encroachment dt. 29/07/2019 is not legal. The

measurement map is not proved, it is necessary to prove the map to prove the encroachment by the plaintiff. There is Nala from gat no. 13 which is not measured during the measurement of gat no. 13. Therefore, the measurement is not true and correct. The plaintiff never encroach in gat no. 13. Therefore, there is no reason of removal of encroachment from the suit property. However, the defendant by using the order dt. 29/07/2019 trying to disturb the possession of the plaintiff and get the area admeasuring 11 R. out of suit property. Hence, the plaintiff has prayed for restrained the defendants from disturbing his peaceful possession over the suit property and not to implement the order in case no. 174/2017 dt. 29/07/2019.

04. Defence by the defendant :-

The defendant opposed the application by filing say at **Exh.17**. It is submitted by the defendant that defendant no. 1 to 3 are owner of gat no. 13. The plaintiff is owner of suit property. Gat no. 13 and the suit property are the adjacent properties there is common band between the property. There was quarrel between plaintiff and defendants since from 2014 because of the common bandh. Therefore, the defendant approached for government measurement. The plaintiffs are present at the time of measurement. The first measurement was took place on 12/05/2014, there was some technical mistake in that measurement. Therefore, the subsequent measurement took on 27/06/2016. In that measurement there is encroachment from the suit property of the area admeasuring 11 R. Therefore, the defendants are entitled for removal of encroachment of the area admeasuring 11 R from the plaintiffs. The plaintiff has illegal possession of the area admeasuring 11 R. The measurement map is proved in encroachment case no.174/2017. However, the plaintiff filed this suit to annoying the defendant. Hence, prayed for reject the application.

05. Heard arguments advanced by Ld. Advocates for both sides at length. Perused documents filed by plaintiffs along with list at **Exh.3** and **Exh.21**.

06. On hearing both the sides, following points arise for my determination and I have recorded my findings thereupon as follows :-

Sr.No.	Points for determination	Findings
1	Whether plaintiffs are having prima-facie case ?	Yes
2	Whether balance of convenience tilts in favour of plaintiffs ?	Yes
3	Whether plaintiffs will suffer irreparable loss if injunction is not granted ?	Yes
4	Whether the plaintiff is entitled for the relief of temporary injunction as prayed ?	Yes
5	What Order ?	Application is allowed.

Reasons

07. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima-facie case, balance of convenience and irreparable loss.

08. The plaintiff has filed 7/12 extract of suit property along with list **Exh.3/2** shows the name of plaintiffs in land holders column. The plaintiff has also filed 8-A abstract of the suit

property. The plaintiff has filed on record measurement map in M. R. No. 2091/2014. He has also filed the order of Sub Divisional Officer, Dindori in encroachment case no. 174/2017 dt. 29/07/2019. The plaintiff has filed whole matter of M.R. No. 2091/2015 below Exh. 21. Peruse the documents filed on record. There is no dispute regarding the ownership of the properties. This is suit for declaration and perpetual injunction. The real controversy between the parties is the encroachment of area admeasuring 11 R. which is cited in measurement map and the order of removal of encroachment dt. 29/07/2019. It is admitted by the defendant that, there is a Nala through gat no. 13. The plaintiff alleged that the Nala was not measured in the measurement. To determine the controversy between the party the measurement is solution and it is necessary to prove the measurement map with oral as well documentary evidence. It will be decide by the adjudication of the matter after the trial. However, till then it is necessary to preserve the possession of the plaintiff over the suit property. Hence, considering the material on record, the plaintiff has proved that the prima facie case in his favour. Hence, I answer point no. 1 in affirmative.

Point no. 2, 3 & 4

09. In presence of prima-facie case in plaintiffs favour. Considering the situation, it appears that if the defendant not restrain from disturbing possession of the plaintiff over the suit property, the plaintiff will suffer irreparable loss, as he cultivates the suit property. The balance of convenience tilts in favour of plaintiff. Hence, I answer point no. 2 to 4 in affirmative.

10. As to point no.5

On basis of above mentioned reasons I pass following order,

ORDER

1. The application Exh.5 is allowed.
2. Defendants, their agent, their family members, their power of attorney holders are restrained from obstructing plaintiffs peaceful possession and removal of encroachment as per order in encroachment application no. 174/2017 dt. 29/07/2019, in suit property, in any manner whatsoever, till the final disposal of the suit.
3. Costs in main cause.

Date – 29.11.2021.

(**S.R.Bandal**)
Jt. Civil Judge Junior Division,
Dindori.

CERTIFICATE

I affirm that the contents of this P. D. F. file order are same word for word as per original Order.

Name of the Court :- S. R. Bandal,
Jt. Judicial Magistrate, F.C,
Dindori

Name of the Steno :- Yogesh M. Bhavsar

Date of Decision :- 29.11.2021

Order signed by
presiding officer :- 29.11.2021

Order uploaded on :- 30.11.2021