

Reg. Civil Suit No. 37/2013

Shri. Raosaheb Sakhahari Khairnar **...Plaintiff**

Vs.

1) **Shri. Shaikh Munir Shaikh Ahamad**
and others... **...Defendant**

.....

Order below Exh.5

1. Present suit is filed by plaintiff for perpetual injunction along with suit present application is filed for restraining defendant No.1 to 3 and 10 for disturbing his peaceful possession over the suit property till decision of this suit.

2. It is alleged by the plaintiff that, the property bearing Gat No.8/1B area 1 Hector 20 R, assessment Rs.0.72 pcs. Especially, a well therein is the subject matter of this suit, hereinafter called as "suit well".

3. It is further alleged that, field Gat No. 8/1B was purchased by the plaintiff by registered sale-deed on 07/10/1994. Since then, he is in cultivating possession over the above said Gat number. Original Gat No.8 was joint. Thereafter, defendant No.1 to 5 also owned field Gat No.8/1A. Later on, defendant No.10 i.e. Sarpanch of Group-Gram-panchayat, Talwade-Kautkhede has

measured their property. At that time, it reveals that, defendant Nos.6 to 9 have committed encroachment and constructed cattle shade over the suit property. With yield of said measurement, defendant No. 1 to 3 as well as, defendant No.10 disturbing peaceful possession of the plaintiff over the suit property. Especially, for taking fruits of suit well. Hence, plaintiff prayed that, defendant No.1 to 3 and 10 be restrained from obstructing peaceful possession over the suit well.

4. Defendant No.1 to 3 and 10 opposed the application by filling reply vide Exh.28, 30 etc.. Contention of the defendant that, plaintiff has purchased the unfertile and unirrigated land in the year-1994. Field Gat No.8/2 is kept for Muslim Kabrasthan in field Gat No.1, which is owned by defendant No.10. There is a common well and plaintiff illegally claiming ownership over it. No well situated in the field of plaintiff hence, prayed for rejection of application.

5. On going through the pleadings of the parties, and on hearing both side, following points arise for my determination along with my findings thereon, for the reasons given below,

Point Nos.	Points	Findings
1	Does plaintiff prove that, prima-facie case in his favour ?	...In negative
2	Does plaintiff further prove that, the balance of convenience lies in his favour ?	...In negative

Point Nos.	Points	Findings
3	Does plaintiff prove that, he will suffer irreparable loss if, temporary injunction is refused ?	...In negative
4	What order ?	As per final order

- REASONS -

6. In support of the pleadings, plaintiff has filed on record a copy of registered sale-deed, 7x12 extracts, two measurement maps, Mutation Entry Nos. 58, 74 etc... Defendant also filed on record the 7x12 extracts of field gat No. 1, which is owned by defendant No.10. Mutation Entry No.8/2 which is kept for Muslim Kabrasthan. Defendant also filed on record 2 measurement maps. These all important documents filed on record.

AS TO POINT NOS. 1 to 3 :-

7. After going through the pleadings of the parties, defendant has not disputed that, plaintiff is not the owner of field Gat No. 8/1B. All the parties have admitted ownership of plaintiff over filed Gat No.8/1B. Dispute in between parties not regarding ownership of Gat No.8/1B. But, the gists of the dispute is that, plaintiff is claiming that, suit well is situated in his property. On the contrary, contention of the defendant No.10 that, said well

situated in the field Gat No.1 and which is owned by Gram-panchayat and it is public well, illegally, plaintiff claiming ownership over it. While arguing matter by both sides given trace on a point of well, whether it is in plaintiff's property or in defendant's property. Except suit well, no dispute reveals in between parties regarding cultivation of field Gat No.8/1B. While arguing matter. In this respect, plaintiff has filed on record measurement map of 09/10/2012. Said map speaks that, no well situated in the field of plaintiff. Plaintiff filed the map of field gat No.1, which is owned by defendant. Therein, two well are mentioned, those are situated in field Gat No. 1. Said map also speaks that, Muslim Kabrasthan is also situated in field Gat No.1 as well as out of field Gat No. 8, 52 R land kept for Muslim Kabrasthan , which was given as separate Gat No.8/2. Plaintiff has filed on record the copy of registered sale-deed, which speaks that, plaintiff has purchased field Gat No.8/1B by registered sale-deed in the year-1994 but, it is unirrigated land at the relevant time. So, when plaintiff has purchased the suit property at that time, well is not situated in field Gat No.8/1B is clear by the registered sale-deed. In the sale-deed, it is nowhere mentioned that, ther is a well in the purchased portion of plaintiff. On the contrary, it is further specifically mentioned that, it is unirrigated land.

8. After going through the entire plaint and application, plaintiff nowhere mentioned that, in which year, he has excavated well. Old 7x12 extracts of field Gat No.8/1 is filed on record. Upto year 1985-86, it is nowhere mentioned that, in the

said gat number, there is a well. But, recent 7x12 extract filed on record, which shows that, in field Gat No. 8/1B, there is one well as well as, in Gat No.1, which is owned by defendant No.10. So documentary evidence filed on record, especially, two measurement maps, therein, it is nowhere mentioned that, in field gat No.8/1B there is well or, they have found any well owned by plaintiff. The measurement map of 09/10/2012 of field Gat No.1 specifically speaks that, in field Gat No.1 which is owned by defendant No.10 near a dry river. One well is situated in Northern portion of field Gat No.1, near Muslim Kabrasthan another well is situated towards Southern side of Gat No.1. So, though, in 7x12 extracts, it is mentioned that, there is well situated in field Gat No.8/1B but, measurement maps do not support said contention.

9. Plaintiff become owner of field Gat No.8/1B is clear and supported by a sale-deed but, in sale-deed, it is nowhere mentioned that, in the sold portion, a well is situated or not. On the contrary, said question reveals negatively that, purchased portion of plaintiff is unirrigated land and it do not have any water source. So, if, at all contention of plaintiff that, there is well in his portion then, he can easily contends and submits in Court that, in which year, he had started the construction, how exclusively he dug a well and convert his land as irrigated one. But, contention of the plaintiff is silent on above point. So, the documentary evidence filed on record. Especially, measurement maps do not supports the contention of plaintiff. Therefore, plaintiff not sufficiently brought on record that, there is a well in field Gat No. 8/1B which is

exclusively owned by plaintiff and defendant Nos.1 to 3 and 10 have no right to obstruct the plaintiff. On the contrary, defendant No.10 measured the property of plaintiff as well as, there property and they have sufficiently brought on record that, the alleged well or disputed well is situated in field Gat No.1 which owned by defendant No.10 and to the said well, which is public well, plaintiff have no where concerned to the said well. Therefore, plaintiff not brought on record prima-facie sufficient ownership and possession over the suit well. Therefore, balance of convenience also not lies in favour of plaintiff and in my opinion, if, injunction is refused, plaintiff will not suffer any irreparable loss. Hence, I answer as to point Nos.1 to 3 in negative and I pass following order,

- O R D E R -

Application stands rejected.

sd/-

Yeola, Dist. Nashik,
Dated : 13/06/2013

(S.D. Kulkarni)
Civil Judge, J.D., Yeola.