


MHNS190022312022 	R.C.S.No.272/2022 Eknath Bajirao Khokhale Vs. Tukaram Ghamaji Bhorakade & Ors.
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ORDER BELOW EXH. NO.17

This is an application filed by the plaintiff and thereby prayed that defendant No. 1 to 3 be restrained from dispossessing him from suit property No. 1A.

2. It is the contention of the plaintiff that he is owner of suit property No.1A. Defendant No.1 and 2 are owners and possessors of suit property No. 1B and defendant No. 3 is owner and possessor of suit property No.1C. After purchasing the suit property No. 1B, defendant No. 1 & 2 filed an measurement application before the TILR, Yeola and On 22.03.2021 the measurement was carried out. As per report of TILR, Yeola the plaintiff and defendant No. 3 have encroached 3R land of suit property No. 1B. Defendant No. 1 & 2 filed an application bearing No. RTM/encroachment/83/2021 before the SDO, Yeola and thereby the plaintiff and defendant No. 3 were directed to remove the encroachment. Thereafter, the plaintiff filed an application bearing No. RTM/Application/793/2023 before Commissioner, Nashik and the order passed by the SDO, Yeola was confirmed. Therefore, the plaintiff was constrained to file the present application and thereby prayed that defendant No. 1 to 3 be restrained from dispossessing him from suit property No. 1A.

3. Vide reply Exh.16 the defendant No. 1 & 2 denied all the contentions of the plaintiff. It is the contention of the defendant No. 1 & 2

that after purchasing the property the plaintiffs started encroaching their area and therefore they moved an application before TILR, Yeola for the measurement of the suit property No. 1B and it was noticed that the plaintiff and defendant No.3 encroached 3R (each) land of suit property No. 1B. Thereafter, the defendants filed an application under section 138 of the Maharashtra Land Revenue Court for the removal of encroachment before the SDO, Yeola and thereafter the plaintiff moved an application before Commissioner, Nashik. As per this orders the plaintiff was directed to remove the encroachment. Therefore, they prayed for rejection of the application.

4. Following points arise for my determination to which, I record my findings thereon for reasons to follow:

Sr.No.	Points	Findings
1.	Whether the plaintiff is having prima-facie case?	In the affirmative
2.	Whether the balance of convenience lies in favour of the plaintiff?	In the affirmative
3.	Whether the plaintiff would suffer irreparable loss ?	In the affirmative
4.	What order?	As per final order.

Reasons

As to point No. 1 to 4

5. It is the contention for the counsel of the plaintiff that the defendant No. 1 & 2 filed false TILR report and the plaintiff did not encroached the defendants area. He further submitted that the plaintiff

has prime-face case and balance of convenience. He further submitted that, If the plaintiff is removed from the suit property then he will suffer the irreparable loss.

6. Per contra the counsel for defendant No.1 & 2 submitted that as per the report of TILR Yeola the plaintiff and defendant No. 3 encroached upon the suit property No.1B and order of SDO Yeola is in their favour and if in such circumstances the injunction is granted then they will suffer irreparable loss.

7. Heard. Perused the record. This application is filed by the plaintiff and therefore he has to show that he has prima-facie case. It is the contention of the plaintiff that he is owner and possessor of suit property No.1A and defendant No.1 & 2 are owners and possessor of suit property. In support of his contention that plaintiff has filed on record 7/12 extract which prima-facie shows that he is owner of suit property No.1A.

8. It is the further contention of the plaintiff that defendant No.1 & 2 carried out measurement of suit property No.1B and the report of TILR Yeola shows that he encroached 3R land of suit property No.1B. On the basis of this false TILR report defendants have filed an application bearing No. RTM/encroachment/83/2021 before SDO, Yeola and thereby he was directed to remove the encroachment. Thereafter, he challenged the order of the SDO, Yeola before Commissioner, Nashik and thereby order passed by the SDO Yeola was confirmed and therefore if in such circumstances he is removed suit property then he will suffer. However, so far as the question that measurement was not carried out properly not cannot be decided at this stage. In this case the possession of the plaintiff upon suit property No.1A is not denied by the defendant No. 1 & 2. This shows that

the plaintiff has prima-facie case and balance of convenience.

9. No doubt the Commissioner Nashik passed an order in appeal No. application bearing No. RTM/Application/793/2023 and thereby he confirmed the order passed by the SDO Yeola. But, even a trespasser or encroacher cannot be legally evicted or dispossessed without following due process of law, which means they must be removed through established legal proceeding, not by force. Therefore, if in such circumstances if the plaintiff is removed without following due proceeding of law then it will suffer irreparable loss. As the plaintiff has prima-facie case and balance of convenience in his favour and therefore I answer point No.1 to 3 accordingly and in answer point No.4 I pass the following order;

ORDER

1. The application is allowed
2. Defendants are hereby restrained from dispossessing the plaintiff from suit property No.1A till the decision of the suit.

Date: 09.10.2025.

(D.M.Gulati)
Jt. Civil Judge, J.D. Yeola,
Dist. Nashik.