

MHPA110003202022**ORDER BELOW EXH.05.**

The plaintiff has filed present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, seeking temporary injunction against the defendant nos.2 and 3 for restraining them from carrying out the measurement and demarcation of the suit property.

02. The property situated in village Sirsam, Tq. Gangakhed bearing Gut No.73, ad-measuring 05 H 58 R, as well described in Para (1) of the plaint, is the subject matter of the present application, hereinafter called as 'the suit property'.

03. Having regard to the rival pleadings following points arise for my determination and I have recorded my findings against each of them for the reasons stated below:

	POINTS	FINDINGS
1)	Whether the plaintiff has prima-facie case ?	...In the partly 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 case the temporary injunction is not granted ?	...In the affirmative.
4)	What order ?	...As per final order.

R E A S O N S**AS TO POINT NOS.01 TO 03:**

04. Perused the pleadings and documents filed on record. Heard both the learned advocates.

05. It is the case of plaintiff that defendant no.3 is his distant relative and adjoining land holder. He owns property in Gut No.74, whereas, defendant no.3 owns property in Gut No.73. The Gut No.74 was previously known as Survey No.18. After consolidation of Survey No.18 it was divided into Gut No.73 and 74. The area of Gut No.74 came to have been recorded as 06 H 78 R, but, on 7/12 extract the said Gut had entry of 05 H 15 R. It remained so since 1970 to 1978. One Gangaram father of defendant no.3 was owner of old Survey No.18 and later Gut No.73. After consolidation and demise of said Gangaram the defendant no.3 succeeded 03 H 50 R land in Gut No.73. In fact in mutation record the said area was recorded as 04 H 70 R, but in fact the said area was only 03 H 50 R in possession. Thus, the defendant no.3 hold on record 02 H 08 R in excess. As per consolidation record the ancestors of plaintiff and defendant no.3 were owners of 06 H 78 R and 03 H 50 R, respectively. Thus, the area of plaintiff's Gut No.74 was reduced by 02 H 08 R. Presently the 7/12 extract of Gut No.74 which is owned by plaintiff has the entry as 04 H 70 R, on the contrary the Gut No.73 owned by defendant no.3 has the entry of 05 H 58 R which is illegal one. In fact the plaintiff's ancestors made efforts for correction with Land Record, however, it was replied that the same has to be got rectified from Commissioner, Land Record, Aurangabad. In such state of affairs the defendant no.3 intend to get measured his property and intend to encroach upon the suit property. Hence, plaintiff objected the measurement of Gut No.73. Moreover, he filed the present application restraining the defendant no.3 to carry out the measurement and demarcation of Gut No.73.

06. The defendant objected the application submitting that the application is not tenable, since no such injunction can be passed

against the Government body. Moreover, the defendant no.3 submitted that in order to ascertain his area he intends to get measured the suit property. Hence, prayed to reject the application. The defendant no.2 failed to file his say/written statement.

07. Perused the documents on record. The perusal of consolidation proceeding transpires that the Survey No.18 was divided into two Gut Numbers as 73 and 74. The Gut No.74 fell to the share of plaintiff's ancestors namely Dattatray Kondiba and Ramrao Kondiba, ad-measuring 06 H 78 R. Whereas, the Gut No.73 fell to the share of Gangaram, father of defendant no.3 to the extent of 03 H 50 R. But the perusal of 7/12 extracts transpires that an entry to the extent of 05 H 58 R to Gut No.73 and 04 H 70 R to Gut No.74 which is owned by plaintiff. Thus, the area of plaintiff appears to have been reduced by 02 H 08 R in 7/12 extract. The concerned Land Record Department appears to be quite aware of the said mistaken entry. Though, defendant no.2 did not appear, however, it intimated vide its letter dated 14.03.2022 at Exh.19 that an appeal is pending with Deputy Commissioner, Land Record, Aurangabad in respect of correction of Survey No.18.

08. It is pertinent to note that despite being aware of mistaken record of Survey No.18 the defendant no.2, T.I.L.R., Gangakhed about to measure the Gut No.73 which is, admittedly, part of Survey No.18. The plaintiff has apprehended that the defendant no.3 in collusion with defendant no.2 intends to get measure the suit property and demarcation to disposes the plaintiff from suit property. The apprehension of plaintiff, in view of admittedly mistaken record of Survey No.18, is well founded. The forceful dispossession of plaintiff by defendant no.3 cannot be over ruled.

09. The plaintiff has come with the specific case that as per consolidation scheme the defendant no.3 holds 03 H 50 R land, whereas, his 7/12 extract record shows his holding as 05 H 58 R. Thus, there is great disparity in the holding and record of Gut No.73. The plaintiff has filed on record the copy of letter issued by T.I.L.R. to Superintendent, Land Record, Parbhani dated 18/02/2000, wherein, the T.I.L.R., Gangakhed stated that there was disparity in the actual holding and 7/12 extract of Gut No.73. Thus, there appears dispute regarding the actual area of Gut No.73 with the record of defendant no.2 itself.

10. The plaintiff seeks injunction order in respect of proposed measurement dated 17/03/2022. On 16.03.2022 an order below Exh.22 was passed directing the defendant no.2 not to demarcate the boundaries of Gut No.73, though, liberty was given to defendant no.2 to measure the Gut No.73. The Ld. Advocate for plaintiff submitted at bar that the defendant no.2 has not measured the Gut No.73 by now. Since the very dispute pertains to the area of Survey No.18 and Gut No.73 being part of Survey No.18 the defendant no.2 would be requiring to measure the Gut No.73 in ongoing appeal with Dy. Commissioner, Land Record, Aurangabad. So it would not be justifiable one to restrain the defendant no.2, being the Government body, from discharging his official duties. On the contrary considering the apprehension of the plaintiff, I am of the view that restraining the defendant no.2 from demarcating the Gut No.73 would be justifiable one. In short, I deem it fit to continue further the order passed below Exh.22. Therefore, considering the nature of dispute in hand, I hold that the plaintiff has proved partly prima-facie case and balance of convenience in his favour. Certainly, the irreparable loss on the part of

plaintiff cannot be over ruled in case the defendant no.2 is not restrained from demarcation. Accordingly, answering the points partly in affirmative, I pass the following order.

ORDER

- (i) The application at Exh.05 is partly allowed.
- (ii) The order passed below Exh.22 is hereby continued in terms that the defendant no.2 is at liberty to carry out the measurement of Gut No.73, however, directed not to demarcate or fix final boundaries of Gut No.73 till next order of the Court.
- (iii) Considering pecuniary nature of application parties to bear their own costs.

Date: 04.07.2022

(A.R. Sayed),
Civil Judge, Senior Division,
Gangakhed.