



ORDER BELOW EXH.5
(Passed on 07/08/2023)

This is an application filed by plaintiffs against defendants for temporary injunction as under.

2. According to plaintiffs, the land admeasuring 1 H. 63 R. in total with *potkharab* out of the land gut no. 529 situated at village Patas, Tal. Daund, Dist. Pune wherein plaintiff nos. 1 & 2 have their land admeasuring 1 H. 23 R. bounded as under.

Towards East : Gut no. 528.
Towards West : Boundary (शिव).
Towards North : The land of Manish Barkade out of gut no. 529.
Towards South : Gut no. 517.

And, the land admeasuring 40 R belongs to plaintiff no.3 out of gut no. 529, situated at village Patas, Tal. Daund, Dist. Pune bounded as under.

Towards East : Gut no. 528.
Towards West : Boundary (शिव).
Towards North : Gut no. 530.
Towards South : The land of Manish Barkade out of gut no. 529.

(Hereinafter referred as a "suit property" for the sake of brevity)

3. According to plaintiffs, the suit property is ancestral property of plaintiffs. The land admeasuring 32 R out of suit property allotted to the defendant no. 21 by way of gift deed whereas the land admeasuring 40 R alienated to plaintiff no. 3. Since then, plaintiffs are in possession over their respective share.

4. Plaintiffs no. 1 & 2 towards western side of the suit property had allotted the land admeasuring 2 R to defendant no. 11, the land admeasuring 1 R to defendant no. 12, the land admeasuring 1

R to defendant no. 13 & 14 each, the land admeasuring 2 R to defendant no. 15, the land admeasuring 1 R to defendant no. 16, the land admeasuring 2 R to defendant no. 17, the land admeasuring 1 R to defendant no. 18, the land admeasuring 0.5 R to defendant no. 19 & the land admeasuring 0.5 R to defendant no. 20 by way of agreement. The defendant nos. 11 to 20 have tried to cause interference and obstruction towards western side of suit property. They have also encroached over the suit property. Therefore, plaintiffs have got measured their land through private measurer. Defendants have denied the same. It is the contention of defendants that, the private measurement is not acceptable to them. Therefore, plaintiffs have measured their land by way of measurement no.7013/15 through T.I.L.R. The suit property accordingly measured on 06/04/2016, wherein it has found that, defendant nos. 3 to 9 have made encroached to extent of 14.5 R towards eastern side, the defendant no. 1 & 2 have made encroachment to the extent of 4 R towards south side. The defendant no. 10 encroached to the extent of 1.5 R towards northern side over the suit property. The defendant nos. 11 to 20 are in possession over the portion, more than portion allotted to them as per agreement and they are in haste to construct houses thereon.

5. Defendants have denied to hand over the encroached portion to plaintiffs when plaintiffs have sought the same. Therefore, plaintiffs have constrained to file the present application for restraining defendant nos. 11 to 20. Plaintiffs have sought the relief in respect of not to create interference and obstruction over excess portion as mentioned in agreement at the hands of defendants nos. 11 to 20 towards western side of the suit property. They have also sought to restrain defendant nos. 1 to 9 from causing interference and obstruction towards southern and northern side. Hence, this application.

6. Defendant nos. 1 & 2 have appeared and file their written statement cum say to the application at Exh. 70 and thereby submitted the suit of plaintiffs is not maintainable and tenable in the eyes of law. These defendants have denied all the adverse allegations made by plaintiffs against them. According to them the measured carried out by plaintiffs is not proper. The measurement carried out only by plaintiff no. 1 and other plaintiffs have not measured the suit property. Notices have also not issued to all concern persons. Hence, they lastly prayed to reject the application by imposing compensatory cost of Rs.50,000/-.

7. Defendant nos. 4, 7 & 8 have also appeared and filed their written statement cum say on record at Exh. 72. They strongly opposed the suit of plaintiffs. They have also denied all the adverse allegations made by plaintiffs against them. They have lastly prayed to reject the present application with cost. Suit proceeds Ex-party against other defendants by passing order below Exh.1.

8. On perusal of the contents of the application and say following points are arise for my determination and I have recorded my findings against each of them with reasons as under: -

<u>Sr.</u> <u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prima facie case is made out by plaintiffs ?	: Negative
2.	Whether balance of convenience lies in favour of plaintiffs ?	: Negative
3.	Whether irreparable loss will cause to plaintiffs if temporary injunction is not granted ?	: Negative
4.	What order ?	: As per final order

REASONS

9. In order to prove their contentions plaintiffs & defendants have filed various documents on record, those will be discussed at the relevant time in discussion as per necessity. Heard both sides at considerable length.

As to Point nos.1 to 3 :-

10. All these points are interlinked with each other therefore they are discussed together to avoid the repetition. It is the contention of plaintiffs that, plaintiffs no. 1 & 2 towards western side of the suit property had allotted the land admeasuring 2 R to defendant no. 11, the land admeasuring 1 R to defendant no. 12, the land admeasuring 1R to defendant no. 13 & 14 each, the land admeasuring 2 R to defendant no. 15, the land admeasuring 1 R to defendant no. 16, the land admeasuring 2 R to defendant no. 17, the land admeasuring 1 R to defendant no. 18, the land admeasuring 0.5 R to defendant no. 19 & the land admeasuring 0.5 R to defendant no. 20 by way of agreement.

11. Defendant nos. 1 to 10 have totally encroached to the extent of 20 R over the suit property towards southern and northern side of the suit property. Furthermore, defendant nos. 11 to 20 also encroached towards western side over the suit property. Though plaintiffs have got measured their land by way of private & cadastral surveyor of T.I.L.R. office, defendants have not removed encroachment therefore, plaintiffs have constrained to file suit against defendants.

12. It is pertinent to note here that, one side plaintiffs have claimed that, they are owners & possessors of the suit property and another side contended that, defendant nos. 1 to 10 have encroached to the extent of 20 R. in total. Furthermore, plaintiffs have also submitted that, defendant nos. 11 to 20 encroached towards western side over the suit property. But, the specification to the extent of how

much portion upon which these defendants have encroached has not given specifically by plaintiffs. Furthermore, plaintiffs have submitted that, plaintiff nos. 1 & 2 have given some portion as earlier mentioned to defendant nos. 11 to 20 by way of agreement but, it is also not placed on record by plaintiffs its details. All these things clearly goes to show that, plaintiffs have not in possession of the entire suit property as they have claimed.

13. It is the cardinal principal of law that, unless and until the person in possession he cannot claim injunction against other persons who caused interference and obstruction into his peaceful possession. Record shows that, though plaintiffs have claimed injunction against defendants, it appears that, plaintiffs have not in possession to the entire suit property. Therefore, considering all these aspects plaintiffs have not prima-facie case. Furthermore, no balance of convenience lies in favour of plaintiffs. So far as concern irreparable loss it will not be caused to plaintiffs in the event of refusal of injunction. Hence, I recorded my findings to points nos. 1 to 3 in the negative.

As to point No.4:-

14. I have answered points No.1 to 3 in negative. Considering these peculiar situations, it is not necessary to impose compensatory cost upon the plaintiffs at this stage as sought by defendants. Hence, in answer to point No.4 and in the decision of application, I proceed to pass following order.

ORDER

1. Application stands rejected.
2. No order as to costs.

Date 07/08/2023.

(Sharad B. Kaldate)
Jt.Civil Judge (Jr.Dn.),
Daund.

Certificate

I affirm that, the contents of this PDF File are same words to words, as per the original Judgment/Order.

Name of Stenographer : Deepak A. Merukar, Grade - 3

Upload on date : 08/08/2023.