

ORDER BELOW EXH. 5

Plaintiff has filed present application under Order 39 Rule 1 of Code of Civil Procedure for seeking temporary injunction restraining defendants from fixing pole or making any construction on the suit property.

The facts of plaintiff's case are as under:-

2. The plaintiff is owner and possessor of 10.5 R land of Gat No. 540/5 situated at Village Khandad, which is bounded as towards East- 10.5 R land of plaintiff's friend - Dattatray Shinde, towards West- Gat No. 504/4 of Inayatullah Jalal, Towards South- Canal and Gat No. 561, Towards North- Gat No. 504/4 of Inayatullah Jalal. (Herein after referred as the Suit Property).

3. The plaintiff stated that he and his friend Dattatray Shinde purchased 21 R land out of Gat No. 540/4 from Vijaykumar Kelkar by sale deed no. 1219/2014. The suit property is 10.5 R land out of said 21 R land. The plaintiff has purchased suit property for the purpose of development. He and other co-sharers of Gat No. 540/5 have measured land and fixed their boundaries. At that time notices of measurement were served on Inayatullah Jalal. After measurement the work of leveling of land was given to Bharat Pawar. After leveling of land, all co-sharers fixed iron pole on the boundaries and get it fenced on 17/4/2018. Till date the fencing is in existence. However, defendants tried to fix their pole on the suit property. They also threatened to plaintiff to dispossess. Therefore he lodged complaint to police station but all in vain. After purchase of suit property the plaintiff get measured the land. His adjoining holder Inayatullah also

made plotting in his land Gat No. 540/4. He also sold plots. However, Deputy director of Land Record, Mumbai, Kokan Region, by its order rejected the map of said plot and ordered creation of new map as per new division of plots. In such situation defendants are tried to claim their right on suit property on the basis of old Map. In fact the defendants did not know where their plots are situated and they tried to fix pole on the suit property. The defendants tried to make encroachment on the suit property.

4. The plaintiff has possession over the suit property. The defendants did not have any right over suit property. Even though they fixed cement pole over the suit property. If defendants makes construction over the suit property then it will cause great hardship to the plaintiff. Hence, plaintiff has filed present suit and application. The plaintiff prayed to restrain defendants or anyone on their behalf from fixing pole on the suit property or making any construction thereon.

5. Defendants have filed their written statement at Exh No. 22. They denied adverse contentions against them. According to them the plaintiff has suppressed material facts from the court. On 2/5/2011 defendant no. 1 has purchased plot no. 34 and 35 from Abdul Kadir Raut. At that time the possession of plots also handed over to the defendant no. 1. On 8/4/2011 defendant no. 1 purchased plot no. 36 from Prajakta Pramod Sukla and obtained possession thereof. On 9/5/2012 defendant no. 2 purchased plot no. 15 from Vishnu Dhadve. On 16/12/1988 defendant no. 4 's relative Aisha Abdul Sattar purchased plot no. 37 by sale deed. Towards north side of plot no. 34, 35 and 36 internal road of 12 feet is existed which further connect to the canal. Said road also connected to Mumbai Goa Highway. The

plaintiff is trying to block that 12 feet road of the defendants. The plaintiff claims his ownership right over that 12 feet road. The plaintiff has no concern with road. All owners of 41 plots including defendants are using said road. Defendants fixed pole at the boundary of said road. The plaintiff falsely stated that defendants are making encroachment on suit land by fixing pole. The Tahsildar Mangaon approved the layout of 41 plots and roads of defendants vide its order No. NLA/SR/220 dated 14/5/1987. The mutation entry of 41 plots also recorded to revenue record. 7/12 extracts of 41 plots also prepared.

6. The previous owner of plaintiff makes Sub division of Gat No. 540. At the time of sub - division of Gat No. 540 notices were not given to defendants and other plot owners. At the time of such division of Gat No. 540 N. A. plots of defendants and other owners could not be taken into consideration. Therefore, Sub division of Gat No. 540 is illegal. Sub division of Gat No. 540 was taken place after the sanctioning of layout plan of plots of defendants. Therefore, sub division carried out by plaintiff is illegal. The plaintiff did not know that where his plot is situated. The plaintiff on the basis of false measurement get prepared false map of sub division of Gat No. 540. The plaintiff has filed false suit on the basis of false documents. Hence, they prayed to reject an application of plaintiff.

7. Considering the rival pleadings of both parties the following points are arises for my determination. I have recorded my findings thereon with reasons recorded thereunder:

S.No	Points	Findings
1	Whether the plaintiff established prima-facie case in his favour?	In the Negative.

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| 2. | Whether the plaintiff established that balance of convenience lies in his favour? | In the Negative. |
| 3. | Whether plaintiff established that irreparable loss will caused to him, if injunction is not granted to him? | In the Negative. |
| 4. | What order? | Application is rejected |

REASONS

8. Point Nos.1 to 3 are interlinked with each other, therefore, I have discussed and answered them together as under.

9. The plaintiff in support of his case has filed on record certain documents i. e. copy of sale deed of suit property, photographs, 7/12 extract of Gat No. 540/5, mutation entry no. 1584, copy of complaint to police station dated 5/5/2018, permission of excavation of soil for dumping on suit land for leveling, map of sub division, map showing fixation of boundary of suit property, copy of measurement dated 23/8/2017, copy of rejection of plot of Gat No. 540/5 of Inaytullah Jalal. Defendants have filed on record copies of 7/12 extracts of their plots, judgment of RTS No. 2818 given by Revenue Minister, copy of writ petition No. 28016/2019 of Hon'ble High Court, the latest photographs, layout map of 41 plots, letter given by TILR Mangaon. Copy of NA order of Tahsildar dated 14/5/1987.

10. I read the application, say and perused documents filed by both parties. Heard Ld. Advocates of both parties, also gone through the written notes of arguments filed on record. The plaintiff come with case that he is owner and possessor of suit land and

defendants are making encroachment over the suit property. However, the plaintiff in his application did not specifically mentioned on which portion of suit property the defendant are making encroachment. Thus, from application it could not be possible to any draw conclusion that on which portion of suit property encroachment was made and by which defendant. The record shows that each defendant is holding different plot. Therefore, it is anticipated on the part of plaintiff to make specific pleading about encroached area and encroacher. The plaintiff has filed hand sketch map on record. In hand sketch the plaintiff mentioned that defendants fixed pole on the suit property.

11. The plaintiff stated that after purchasing suit property he measured suit property vide measurement no. 3852/2017. The copy of measurement map is filed on record. It shows that said measurement is carried out on the application of Vijaykumar Kelkar who is previous owner of plaintiff. It shows boundary of Gat No. 540/5. However, said map did not show the boundaries of suit property. Therefore, from said map, it is not possible to draw any conclusion that where the suit property is situated. Thus, plaintiff except hand sketch map did not file any documents to show the exact boundaries of his suit property.

12. From the record it revealed that the suit property is small part or area of Gat No. 540/4. Gat No. 540 is part of S. No. 51. S. No. 51 is of 4H-58 R land. Initially Inayatullah purchased 2H-2R land out of S. No. 51. Thereafter, in the year 1979, S. No. 51 divided in Gat No. 529, 530, 538, 540 and 561. Land 02H-02R purchased by Inayatullah is part of Gat No. 540. Inayatullah applied for N. A. permission in the year 1987. Said N. A. order of Tahsildar dated

14/5/1987 shows that it is given for S. No. 51 1B (3) area 02H-02R land. Accordingly, mutation entry no. 1561 was taken place. Map was prepared by Deputy Superintendent of land revenue, Mangaon. Separate 7/12 extract of all N. A. plots were prepared.

13. However on 18/2/2015 Deputy Director of Land Revenue in exercise of his power under consolidation scheme rejected layout plan which was sanctioned by Tahsildar dated 14/5/1987. Thereafter, Gat No. 540 was divided into sub part such as Gat No. 540/1, 540/2, 540/3, 540/4 and 540/5. The measurement carried out vide measurement no. 443/5/2/2016. Map showing aforesaid sub division of Gat No. 540 was prepared. As per measurement dated 23/8/2017 boundaries of Gat No. 540/5 was fixed and map was prepared. The plaintiff and Dattatray Shinde purchased 21 R land out of Gat No. 540/5. But after purchasing of 21 R land out of Gat No. 540/5 they could not get measured land and fixed boundaries thereof. Therefore, boundary of 21 R land or boundaries of suit property is not mentioned in Map dated 23/8/2017. Thus, for want of any measurement map, it could not be said that at which portion of Gat No. 540/5 the suit land is situated. Thus, except the hand sketch map, there is no record to identify the suit property. As hand sketch is prepared by plaintiff, there is no authenticity of map.

14. The record shows that against the order dated 18/2/2015 of Deputy Director Land Revenue of rejecting layout plan of Tahsildar dated 14/5/1987 appeal was filed before Revenue Minister. The Revenue Minister by his order dated 29/7/2019 set aside the order of Deputy Director and revived the N. A. order of Tahsildar dated 14/5/1987. The sub division i.e. 540/1, 540/2, 540/3, 540/4 and

540/5 which were taken place as per order of Deputy Director of Land Revenue also rejected. The measurements of Gat No. 540 taken place after division such as 43/2015, 267/2016 and mutation entry no. 1458 also set aside and quashed. Now Gat No. 540/5 and other sub division of Gat No. 540 are not in existence to revenue record. The Measurement maps filed by plaintiff also rejected by order Revenue Minister. The order of Revenue Minister was challenged by filing writ petition before the Hon'ble Bombay High Court. However on 22/10/2021 said writ petition was dismissed by Hon'ble Bombay High Court.

15. The layout map which is prepared by Deputy Superintendent of Land Revenue as per N. A. order of Tahsildar dated 14/5/1987 is now revived. The defendants are holding the plots as per N. A. order of Tahsildar dated 14/5/1987. After order of Revenue Minister measurement of plots of defendants and others was taken place on 20/2/2020. That measurement map is filed on record. The measurement map shows that towards North side of plot no. 36 and 37 an internal road of 12 fts. is available for use of plot holders including defendants. The plaintiff claims his ownership over that 12 fts. road. However, the plaintiff did not filed anything on record to show that said 12 feet road is situated in the suit land. Moreover, the measurement maps on which the plaintiff is relied is now rejected and not in existence. The defendants have filed sufficient material on record to show that 12 feet road is belongs to owner of plots and defendants and it is part of layout sanctioned by Tahsildar dated 14/5/1987. Now defendant no. 1 is making construction on his plot no. 36 and 37. The defendant no. 1 has filed on record the construction permission given by Nagar Panchayat Mangaon dated 18/11/2021. The defendant has

filed on record photographs of his construction. It shows that now construction of second floor of building of defendant no. 1 is in progress.

16. The plaintiff by way of present application prayed to restrain the construction of defendant. However, the plaintiff did not file anything on record to prima facie show that defendant is making construction on the suit property. Per contra the layout plan, measurement map dated 20/2/2020 and construction permission filed by defendants prima facie shows that defendant no. 1 is making construction on his plot no. 35 and 36.

17. Thus, for the reason noted above I come to conclusion that plaintiff failed to establish his prima facie case. Today the construction of defendant no. 1 is in progress. If injunction is granted then construction of defendant will be stopped and it will caused great hardship to him. The balance of convenience lies in favour of defendants. Accordingly, I answered point no. 1 to 3 in the negative.

As to Point no. 4:-

18. Considering the negative findings of point no. 1 to 3, the application of plaintiff is liable to be rejected. Hence, the following order.

ORDER

- 1) An application is rejected.
- 2) Costs in cause.

Sd/-

Date:- 13.10.2022

(A. S. Satote)
Jt. Civil Judge Junior Division, Mangaon.