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IN THE COURT OF JT.CIVIL JUDGE JUNIOR DIVISION, MIRAJ, DIST. SANGLI.
(Presided over by Mr.K.B.Chougule)

Regular Civil Suit No.125/2013
Exh.

1. Shri.Rajgonda Nemgonda Patil,
Age 47 Yrs., Occu. Agriculture,
2. Sou.Tanuja Rajgonda Patil,
Age 40 Yrs., Occu. Household,

Both R/o: Mhaisal, Tq.Miraj, Dist.Sangli.....**PLAINTIFFS.**

VERSUS

1. Shri. Udaysinha Vasantryao Shinde,
Age 56 Yrs., Occu. Agriculture,
2. Shri. Chandrasen Vasantryao Shinde,
Age 60 Yrs., Occu. Agriculture,
3. Shri. Shantinath Anna Kavathekar,
Age 55 Yrs., Occu. Agriculture,
4. Sou.Mangal Shantinath Kavathekar,
Age 48 Yrs., Occu. Agriculture,

All R/o: Mhaisal, Miraj, Tq.Miraj,
Dist.Sangli.**DEFENDANTS.**

SUIT FOR: RECOVERY OF POSSESSION OF THE ENCROACHED PORTION

Mr.K.C.Dudhgave, Advocate for the plaintiffs.

Mr.M.M.Mane, Advocate for the defendant no.1.

Mr.A.M.Hangad, Advocate for the defendant no.2.

Mr.S.B.Dhole, Advocate for the defendant no.3 and 4.

JUDGMENT

(Delivered on 28.11.2016)

The plaintiffs claim recovery of 21R portion of agricultural land encroached by the defendant no.1 in Gat No.497/1 wherein plaintiffs own and possess southern side 3H 64R out of total land ad-measuring 5H10R. The detailed description of boundaries is given in the plaint para no.1 here-in-after referred as "the suit land".

2. The plaintiffs' case is shortly stated as under:-

The plaintiffs purchased 1/2 southern side portion of Gat No.497/1 from Sitabai Patil vide registered sale deed dated 04.07.2007 thereafter the remaining 1/ 2 portion is purchased by the plaintiff no.2 Tanuja Patil and her mother vide registered sale deed dated 06.10.2008. There is Krishna Koyana lift irrigation scheme for which 88R southern portion was acquired and it is numbered as 497/2. The plaintiffs have 21R portion towards the southern side of the Krishna Koyana lift irrigation purpose. Taking disadvantage of plaintiffs' want of man power the defendant no.1 encroached on the suit land. The defendant no.1 is associated with family of Shinde Sarkar and he has political influence. On 05.06.2012 the plaintiffs got measured their land and the defendant no.1 was informed about his encroachment in the suit land. On 23.06.2012 police complaint was filed against the defendant no.1 however no action was taken against the defendant no.1 due to his political influence. The plaintiffs sought recovery of possession of the suit land by sending Advocate notice, however, defendant no.1 did not comply with it. The defendant no.2 to 4 are formal parties as no relief is sought against them. Under these facts and

circumstances the plaintiffs claim recovery of possession of the suit land from the defendant no.1, the determination of mesne profits and its' recovery is sought.

3. The defendant no.1 files written statement vide Exh.25. The acquisition of land from Gat No.497 for the project of Krishna-Koyana Lift Irrigation is admitted. Plaintiffs ownership over 21R portion towards southern side canal is denied. The measurement dated 05.06.2012 and its' map are denied. The defendant has been possessing the suit land since last several years without any interruption as earlier it was in possession of the defendant's predecessor. As per partition dated 23.02.2005 the defendant owns and possesses 2H 60R towards northern side of Gat No.498. The title of the suit land is not with plaintiffs. The alleged encroachment is not shown by surveyor. The map does not disclose the ground reality as the acquired portion is not shown. Since 2007 i.e. when plaintiffs purchased the property they had never objected defendant's possession in the suit property. The plaintiffs' have been giving tacit consent to defendant's possession in the suit property. Considering all these aspects dismissal of the suit is prayed.

4. The defendant no.2 files written statement vide Exh.32. It is contended that he is not concerned with dispute between the plaintiffs and defendant no.1. The suit land was unproductive and barren. There was 16 fts. south-north road which proceeds to village extension site. If suit is decreed the existence of road would be extinguished. Considering these aspects dismissal of the suit is prayed. The defendant no.3 and 4 file written statement vide Exh.37. They contended that they have no concerned with the dispute between plaintiffs and defendant no.1, hence appropriate order is sought to be passed.

5. In view of pleadings following issues are framed vide Exh.39. The issues and findings along with reasons are recorded as under.

ISSUES

FINDINGS

- | | | |
|---|---|------------------------------------|
| 1 | Do plaintiffs prove that they are owner of the suit land? | ...In the affirmative. |
| 2 | Do they further prove that defendants have encroached 21R land of the suit land as per map annexed with the plaint? | ...In the affirmative. |
| 3 | Are plaintiffs entitled for the removal of the encroachment and possession of the encroached portion from the defendants as prayed for? | ...In the affirmative. |
| 4 | What order and decree ? | ...The suit is decreed with costs. |

REASONS

6. Heard the learned Advocate for the plaintiffs Mr.K.C.Dudhgave and the learned Advocate for the defendant no.1 Mr.M.M.Mane.

As to the issue No.1 to 4 : -

7. The defendant no.1 disputes plaintiffs' ownership over the suit land, however, there is no substance in defendant's contention that unless plaintiffs examine witnesses and get proved the sale deeds of the suit land cannot be helpful to plaintiffs. In order to show ownership of Gat no.497/1 the plaintiffs produce two registered sale deeds Exh.80 and 81. The name of the plaintiffs is recorded as owner and possessor to the extent of 3/4th share of the suit land Gat No.497/1 on the basis of registered sale deed. The controversy involved in this case relates to the encroachment therefore challenge to plaintiffs' title is nominal and without any merit hence the issue no.1 is answered in the

affirmative.

8. It is specific case of the plaintiffs that the defendant no.1 has encroached upon 21R land towards southern side of Gat No.497/1. In order to prove encroachment of 21R portion plaintiffs examine Surveyor Vinod Patil vide Exh54. As per मो.र.नं.-3999 on the basis of plaintiffs' application dated 07.04.2010 he deposes to have completed measurement of the suit land. On 05.06.2012 actual measurement was fixed and the notices were issued to the defendant no.1 and others. The copy of the notice is produced vide Exh.58. As per E.T.S.(Electronic Total Station) method measurement was completed. The demarcation of original survey number was identified and marked. At the time of measurement there was no any hurdle due to crops situated in the field. After measurement it was tallied with the original record at office and for the fixation of boundaries notices were issued and on 18.06.2012 boundaries were fixed. The statement of persons who were present at the time of measurement was recorded. At the time of actual measurement and fixation of boundaries the defendant no.1 was present, however, he did not sign panchanama. There is one canal which passes through Gat No.497. The acquired portion for canal is numbered as Gat no.497/2 and the suit land Gat Number is 497/1 which is towards southern side of the canal having it total measurement is 21R. The measurement map is produced at Exh.59 which is prepared on the basis of original record and the suit land is shown.

9. In cross-examination of the Surveyor the exercise of measurement is tried to be questioned on the ground that the witness has no certificate of training in E.T.S. measurement. Whether machine was operational? as there is no panchanama to that effect. There are divisions of Gat No.497, 510 and 192. No particulars are mentioned about portion of bund in Gat No.497. It is

admitted that the acquired portion of the suit land Gat number is not shown in the map. Similarly the encroached portion is not shown in colour and name of holder who encroached in the suit land is also not mentioned. In cross-examination of the defendant no.1 he admits that he has possession of land up to the acquired portion for canal. It is admitted that he has not measured his own land. He has no documentary evidence to show that he owns land up to the canal. The defendant no.1 has not sought fresh measurement or challenged the measurement completed by plaintiffs' witness V.B.Patil who is Surveyor and report submitted in this case. He admits that he was present at the time of measurement however he did not sign panchnama.

10. The learned Advocate for defendant no.1 submits following reported rulings- (1) “Ram Kishore Sen and others Vs. Union of India and others [AIR 1966 Supreme Court 644 (V 53 C 124)]”. (2) “Abdul Rahim @ Guddu s/o Abdul Majid Vs. Sheikh Qayyum s/o Sheikh Rashid and others [2010 (1) Mh.L.J. Page 343]”. The first ruling relates to the necessity of accuracy of map and the second ruling is in respect of exhibiting of document. So far as the accuracy of measurement map is concerned the plaintiffs examine Surveyor to prove the factum of encroachment in the suit land. According to the defendant no.1 the plaintiffs have no land left towards the southern side of the canal, however, the measurement report does not support defendant's contention.

11. The measurement report submitted by Surveyor vide Exh.56 and the deposition of Surveyor clearly show that towards southern side of canal the plaintiffs own 21R land which is part and parcel of Gat No.497. The Surveyor was required to mention certain details in the map i.e. by showing exact encroached portion in colour and portion of land which was acquired for

Krishna-Koyana drip irrigation project from the Gat No.497. The absence of these details in the map does not help the defendant no.1 as the surveyor has categorically deposed the factum of encroachment by the defendant no.1 to the extent of 21R which is part and parcel of Gat No.497 owned by the plaintiffs. Despite knowing measurement and demarcation shown by the Surveyor the defendant no.1 does not prefer any appeal against measurement or asks fresh measurement or superior measurement by D.I.L.R. This itself indicates the fact that the defendant no.1 tacitly acknowledges encroachment, however, deliberately resist to surrender the suit land i.e. encroached portion in favour of plaintiffs. The evidence clearly shows that the plaintiffs prove encroachment in the suit land by the defendant no.1 which is shown in the plaint schedule map.

12. The defendant no.1 owns Gat No.498 admeasuring 2H 60R which is towards southern side of the suit land. There is no documentary evidence to show that immediately towards Gat No.498 there is a canal. Had this fact been proved the suit could have been dismissed. The written statement of the defendant no.1 Exh.25 contains specific pleadings that he has been possessing the 21R portion since long years without any interruption. His predecessors were also in possession of that portion and question of encroachment did not arise at any point of time. To substantiate this pleadings the defendant no.1 has no evidence as no adverse possession is claimed therefore length of period since the defendant no.1 claims to have been possessing the suit land i.e. 21R land does not create any right in his favour. The defendant no.1 needs to surrender possession of the suit land to plaintiffs. The plaintiffs are entitled to recovery of encroached portion from the defendant no.1 hence the issue no.2 and 3 are answered in the affirmative and for the answer of issue no.4 following order is passed.

ORDER

1. The suit is decreed with costs.
2. The defendant no.1 is directed to handover possession of 21R land as shown in the map prepared by T.I.L.R. vide Exh.59 within three months.
3. The enquiry of mesne profits be held separately.
4. The decree be drawn accordingly.

Miraj.
Date:- 28.11.2016

(K.B.Chougule)
Jt.Civil Judge, Jr. Division, Miraj.