

Received on - 18.03.2007.
Registered on - 18.03.2007.
Decided on - 20.01.2016.
Duration : 8 Yrs. 10 Ms. 2 Days.
Exhibit No. _____

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION
JATH DISTRICT SANGLI.
[Presided over by R.T. Ingle.]

Regular Civil Suit No. 72/2007.

- | | | |
|----|----------------------------------|---|
| 1] | Shri. Balasaheb Shivdas Mule. |] |
| | Age 50 yrs. Occu. Agri |] |
| 2] | Shri. Ramdas Shivdas Mali. |] |
| | Age 48 yrs. Occu. Agri. |] |
| 3] | Shri. Ankush Shivdas Mule. |] |
| | Age 45 yrs Occu. Agri. |] |
| 4] | Shri. Santosh Maruti Borade |] |
| | Age 45 yrs. Occu. Agri |] |
| | Resident of Kaslingwadi Tal.Jath |] |
| | District Sangli |] |

Plaintiffs.

Vs.

- | | | |
|----|--------------------------------|---|
| 1] | Shri. Ramchandra Dashrath Koli |] |
| | Age 60 yrs. Occu. Agri |] |
| 2] | Shri. Laxman Dashrath Koli |] |
| | Age 52 yrs. Occu. Agri |] |
| 3] | Shri. Maruti Dashrath Koli. |] |
| | Age 56 yrs. Occu. Agri. |] |
| 4] | Shri. Vishwas Yallappa Koli |] |
| | Age 60 yrs Occu. Agri. |] |

Defendants.

5] Shri. Uttam Yallappa Koli]
Age 40 yrs. Occu. Agri.]
All resi.of Kaslingwadi, Tal.Jath]
District Sangli.]

Suit for recovery of possession
and perpetual injunction.
V.O.S.M. Of Rs. 3000 /-

Adv. S.K.Potnis for the plaintiffs.
Adv. S.B.Shaikh for the defendants

JUDGMENT

[Delivered on – 20.01.2016.]

1] This is suit for recovery of possession and injunction.
The defendants have filed the counter claim for injunction.

2] It is the case of plaintiffs that Gat No.247 is belonging
to them. At Northern side, there is Gat No. 246 and it is belonging
to defendants. It is the allegation of the plaintiffs that defendants
without any title or interest in Gat No. 247 are trying to encroach
upon the land of plaintiffs.

3] The defendants have resisted the suit by filing their

written statement and counter claim. It is the case of defendants that they are not trying to encroach upon their land , rather the plaintiffs are claiming their right into their property by demolishing the bandh Gat No.246, by cutting trees thereon and by taking water from the well, which is in their area. It is therefore they have claimed injunction against the plaintiffs.

4] My predecessor has framed issues vide exh.79. Those are reproduced, here along-with my finding for the reasons to follows-

S.No.	Issues	Findings
1	Whether plaintiffs prove that they are exclusive owner of suit property No.1?	In the affirmative.
2	Whether plaintiffs prove that defendants have encroached over their suit property No.1 to the extent of 80 R land ?	In the affirmative
3	Whether plaintiffs are entitled for recovery of possession of encroached portion i.e. 80 R land ?	In the affirmative.
4	Whether plaintiffs are entitled for perpetual injunction as prayed ?	In the affirmative.

5	Whether the defendants prove that they are exclusive possessor of counter claim property ?	In the negative.
6	Whether plaintiffs are interfering and obstructing to defendants over the counter claim property ?	In the negative
7	Whether defendants are entitled for compensatory cost of Rs. 5000/-?	In the negative
8A	Whether defendants prove that they are title holder of suit property on the ground of adverse possession ?	In the negative.
8	What order and decree ?	As per final order.

REASONS

As to issues No.1 and 8A

5] To substantiate the claim, the plaintiffs have examined Ankush Shivdas Mule to prove their pleading, Maruti Yadu Sale to prove the encroachment map vide exh.99, Balaso Dadaso Bhosale to prove that he assisted the court commission in measurement of disputed site with the help of ATS Machine and Sambhaji Appa Shinde to prove the cause of action. Whereas to prove the counter

claim as well as defence, defendants have examined Maruti Dashrath Mali to prove their stand and counter claim and Ramchandra Nivrutti Hipparkar and Dhondiram Dnyanu Hipparkar to prove that they are in adverse possession. In the oral evidence the witnesses stand to their case, they have not given any admission in favour of either, therefore there is no need to reproduce them.

6] It is undisputed that the land bearing block No. 247 admeasuring 1 H. 93 R is the ancestral property of the plaintiffs. It is further undisputed that the name of plaintiffs are recorded to 7/12 extract as owners and possessors of land bearing block No 247. It is further undisputed that the defendants are owners of land bearing block No.246. It is also undisputed that the land of defendants is at Northern side to the land of plaintiffs. It is the case of plaintiffs that defendants have encroached upon 80 R land bearing block No. 247. The defendants have taken first stand that they have not encroached upon 80 R land. Their second stand which is taken by them in the evidence first time, is that they are owner of that 80 R land by way of adverse possession but they have not pleaded so in their pleading. I have minutely perused their pleading and their pleading did not reveal that they have ever claimed that 80 R land is in their adverse possession. The defendants and their witnesses have led their evidence on this count that 80 R land is in possession

of their ancestor and presently it is in their possession without any disturbance and peacefully and they are owner of it. As per the law of pleading, the party has to plead first and then to prove. In this case, nothing has been pleaded as to adverse possession, therefore the evidence on the point of adverse possession can not be taken into consideration. Hence on the basis of undisputed fact that plaintiffs are owner of the suit property and there is no adverse possession on it, particularly i.e. on 80 R land. Hence I record my finding on issue No.1 in the affirmative and issue No.8A in the negative.

Issue No. 2 and 3

7] It is the case of plaintiff that in the year 2006, the defendants have tried to encroach upon their land and finally they have encroached upon their land. They have made oral request to the defendants not to do so, but defendants have raised dispute with them, therefore they had called people from the village to mediate the matter, but defendants were not listening to them, therefore plaintiffs constrained to file this suit. After filing the suit, they have applied for appointment of court commissioner. Their application was allowed. The TILR was appointed as court commissioner, it

was directed to him to measure the land of plaintiffs as well as the land of defendants and show the encroachment if any. He , accordingly visited the disputed site, took measurement in presence of plaintiffs and defendants as well as the witness and prepared the report along-with map vide exh.99.

8] TILR is examined as PW 2 to prove the measurement map exh.99. He stated that he measured land of plaintiffs as well as of the defendants by using ATS Machine and prepared map vide exh.99. He proved the map. He stated that the defendants have encroached upon the land of plaintiffs to the extent of 80 R land and said encroach area is shown in blue colour. He was cross examined on the point that he has not measured the disputed site properly and he has not measured entire survey number. But, he denied it and specifically stated that he measured property and entire survey number.

9] The learned advocate for the defendants Shri. Shaikh submitted 3 authorities 1] AIR 1966 SC 644[1], 2] 2004[2] Mh.L.J. 752, 3] 2010[1] Mh.L.J.343 and orally submitted that mere exhibiting document does not mean to proof and map prepared by private person does not carry presumption.

10] I have perused the aforesaid authority. The first authority relates to proof of map vide section 83 of Evidence Act. In this case, it is held that the map prepared by private person and not under the authority of Government is irrelevant, unless it is proved. It is also held that said map does not carry any presumption under section 83. In the second authority, it is held that exhibiting document is an administrative Act, it has nothing to do with the proof. In the third authority, it is held that the purpose of exhibiting document is just for its identification and it does not mean to proof of contents of the document.

11] In this case, T.I.L.R. , has proved the map vide exh.99 as required by section 83 of Evidence Act as well as Order 26 Rule 9 of Code of Civil Procedure. Therefore the aforesaid authorities are not of any help to defendants. Hence I record my findings on issues No.2 and 3 in the affirmative that defendants have encroached upon the land of plaintiffs to the extent of 80 R and therefore, plaintiffs are entitle to recover it.

Issue No. 4

12] It has been proved by the plaintiffs by their oral evidence as well as by documentary evidence that they are owners

of land bearing block No. 247 and their land to the extent of 80 R is encroached upon by the defendants vide exh.99 and defendants have denied this fact in their evidence, therefore it amounts to disturbance and therefore plaintiffs are entitled for relief of injunction against defendants. Hence I record my finding on issue No. 4 in the affirmative.

As to issue No. 5 to 7

13] The defendants have claimed injunction against the plaintiffs stating that the plaintiffs are trying to demolish bandh and attempted to cut the trees upon it and taking water from the well, which is in their land. Oral evidence on record read with encroachment map vide exh.99, reveals that there is land of defendants towards northern side of land of plaintiffs and it shows that 80 R land from northern side is encroached upon by the defendants. According to defendants, they have made bandh on that 80 R land and they are seeking injunction on that 80 R land as well as to the well. It is clear that 80 R land is belonging to plaintiff, therefore injunction can not be granted against the plaintiff, being they are owner of it, but so far as well is concerned there is no satisfactory record to show that where exactly that well is situated. It is not clear from the record that whether well is situated

on that 80 R land or in the land bearing block No. 246 belonging to defendant. For the purpose of locating well, the evidence of scientific expert is necessary, such a scientific expert is Government Servant or other Engineer, who is able to measure the land and locate the well. In this regard there is no evidence of scientific expert to show where the well is situated and as per the oral evidence of party they are saying that it is in their land. In absence of clear evidence as regard to whether the well is situated issuing injunction will be misused. Hence I record my findings on issues No. 5 to 7 in the negative.

As to Issue No. 8A

14] The defendants have claimed compensatory cost of Rs. 5000/- against the plaintiffs. The evidence on record shows that defendants have encroached upon the of 80 R land. So in such circumstances cost can not be awarded to defendants. Hence I record my findings on this issue in Negative

As to issue No.8

15] The plaintiffs have proved that they are owner of land bearing block No. 247 and 80 R land is encroached upn by the

defendants. Therefore plaintiffs are entitled for recovery of possession of 80 R land, as well as protection by way of injunction to their possession. Hence for the finding of issue No.8 I pass the following order :-

ORDER

1] Suit is decreed with costs. .

2] The defendants are hereby ordered to hand over the possession of 80 R land which is shown in map vide exh.99 within one month from the date of order.

3] The defendants are hereby restrained from disturbing possession of plaintiffs over Gat No.247, in any manner.

4] Counter claim is dismissed.

5] Decree be drawn up accordingly. Exh.99 TILR Map shall form part and parcel of the decree .

sdxxx

Date : 20.1.2016.

[R.T. Ingle.]
Civil Judge Jr.Dn. Jath.

[Pronounced in open Court.]