

Order below Exh.5 in R.C.S. No.44/2023

CNR-MHSN-12-000341-2023

(Kashinath Ishwara Kumbhar V/ Arun Tanaji Lad)

The plaintiff has filed the suit for perpetual injunction. By this application plaintiff praying to restrain the defendant from carrying out construction of boundary wall by encroaching some portion of land belonging to plaintiff. The description of suit property is as under:

2. Description of suit properties:-

Following landed property situated at Kundal, Tal. Palus, Dist. Sangli are the suit properties.

Sr. No.	Gat No.	House No.	Area H.=R.	Assessment Rs. Pe.	Share/ Suit property
A	30	2727	0 H 31 R Pot Kharab 0.04 total – 0 H 35 R	0 Rs. 9 paise	House property 0.01.77R

The boundaries are as follows :-

East - Property of Sanjay Sudam Bhise

West - way

South – property of Uttam Lad

North- property of defendant Arun Tanaji Lad

(Hereinafter described as suit properties)

Brief facts-

3. Plaintiff has purchased the suit property admeasuring 2 R on 26/04/1994 from Vishnu Savant by way of register deed NO.

1967/1994 in gat No. 30. Plaintiff is in possession of suit property. His name is mutated over 7/12 extract excluding pot kharab / barren land total 0.01.77. The plaintiff is paying taxes from time to time to Grampanchayat, Kundal. His name also mutated on the Kundal Grampanchayat assessment. He has obtained loan from society by keeping the suit property as security. He has taken water connection, and electricity connection. In short, he is residing peacefully on the suit property.

4. On the northern side adjacent to the house property i.e. suit property of plaintiff there is house of defendant. The defendant has purchased in the land gat No. 30 admeasuring 0.01.33 R and constructed of house. The defendant is causing obstruction and interference in the possession of plaintiff over suit property. He is excavating the some portion of land by encroaching some portion of land of plaintiff and carrying out construction of boundary wall.

5. The plaintiff has made complaint to Tantamukti president who fixed the boundaries in between property of plaintiff and defendant. In spit of it the defendant is trying to encroach and carrying out construction of boundary wall. If the defendant succeed, the plaintiff will suffer irreparable loss and he will deprive from easementary right of light, air etc. He will also suffer from depriving his right to exercise right on the suit property. Therefore this application.

6. The defendant filed written statement vide Exh.32. He denied the averment of plaintiff. Defendant submit that, plaintiff has not mentioned in the plaint how much area encroached by the defendant. The suit property area mentioned in the plaint is wrong and incorrect. In view of sale-deed there is difference in the area described

in plaintiff. In fact the sale-deed of defendant is earlier executed than plaintiff. The defendant has purchased the land admeasuring 1.5 R by way of sale-deed from Vishnu Sawant in land Gat No. 30 on 19/04/1994 for the consideration amount of Rs. 7,500/-. The suit property i.e. land belonging to plaintiff does not come towards northern side of defendant's land. The defendant has constructed house, now he is constructing boundary wall. Therefore question of interference and obstruction and encroachment in the land of plaintiff does not arise. The Tantamukti president is not expert for making demarcation of boundaries. The Tantamukti president never came on the suit property and not demarcated the boundaries between lands of plaintiff and defendant. The defendant is constructing boundary wall for security and protection of about 5 to 6 feet. Therefore, question of affecting natural right of plaintiff does not arise. Simpliciter suit for injunction is not tenable without claiming other relief of demarcation of boundary, recovery of possession etc. Which are consequent to the relief claimed. Plaintiff has no locus standi to file the suit. Lastly, he prayed to reject the application.

7. After considering the contents of application following points arise for my determination along with my findings thereon.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff prove that he is having prima-facie case ?	<u><i>In the Negative</i></u>
2.	Whether the plaintiff prove that balance of convenience lies in his favour ?	<u><i>In the Negative</i></u>
3.	Whether the plaintiff prove that he will suffer irreparable loss if the injunction is not granted ?	<u><i>In the Negative</i></u>

4.	What Order ?	<u>Application is rejected.</u>
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REASON

8. Plaintiff has placed reliance upon copy of sale-deed dated 26/04/1994. Plaintiff also reliance upon copy of 7/12 extract of Gat No. 30, Plaintiff also reliance upon copy of mutation No. 6134. Plaintiff also placed reliance upon copy of Namuna No.8, copy of tax assessment of village Kundal, copy of complaint to police Station Kundal, copy of complaint to Tantamukti president of Grampanchayat Kundal, Plaintiff also placed reliance upon photographs of suit property. On the contrary the defendant has filed copy of sale-deed dated 26/04/1994.

AS TO POINT NO. 1 TO 3:-

9. These points are interlinked with each other and for the sake of convenience they are discussed together.

10. Upon perusal of sale-deed of plaintiff bearing No. 1967/1994 dated 26/04/1994, it appears that, one Vishnu Sawant sold the land in gat no.30 to plaintiff total admeasuring 0.2R in the sale-deed the four boundaries column shows eastern side the land of Tanaji Sawant, southern side the land of Bhise, western side land of Uttam Vishnu Lad and towards Northern side there is way. On the contrary the sale-deed of defendant shows that, he purchase the land from same owner Vishnu Yashwant Sawant admeasuring 1-50 R in land gat No.30. The four boundaries shows that from eastern side the land of Sudam Ramu Bhise, southern side the open land of Nagarparishad and land of plaintiff Kashinath Kumbhar, on western side there is way of Kundal – Balwadi, northern side property of

Sushila Baban Bhise. Thus there appears difference in four boundaries in both the sale-deeds. This mistake have to be corrected. This difference and mistake mentioned in the sale-deeds is best known to the plaintiff and defendant. No doubt plaintiff and defendant are in the possession of their houses constructed by them. The photographs shows the houses constructed by plaintiff and defendant are adjacent to each other. The defendant says his sale-deed is earlier executed then before plaintiff. But it can not be say at the stage that, the sale-deed of defendant is correct.

11. The learned advocate for plaintiff argued that, defendant has not filed the construction permission from concern authority. Even defendant has not filed other relevant document of revenue department. Plaintiff placed reliance on certificate of Grampanchayat which discloses that towards northern side there is house of defendant. Plaintiff also placed reliance affidavit of Chandrakant Narayan Parade, and affidavit of Maruti Vishnu Sawant, Shivaji Sawant, Satish Sawant and Uttam Sawant. These deponents deposed that, they knows to plaintiff and defendant and suit property and supported to the claim of plaintiff.

12. The learned advocate for defendant argued that, he is carrying out construction of boundary wall for protection and security purpose. He will suffer irreparable loss if the injunction is granted.

13. This court is only required to see and make inquiry that whether defendant carrying out construction of boundary wall by encroaching some portion of land towards northern side belonging to plaintiff. But the plaintiff in his plaint do not pleaded that how much area of land encroached by the defendant. Even the copy of sale-deed filed by plaintiff do not support to the four boundaries mentioned in the plaint. The sale-deed is of 1994, but till today he has not rectified

and corrected to it. Even till the construction of house of the defendant taken place, plaintiff has not objected. After long years he appeared and file this suit. Therefore, there appears latches on the part of plaintiff. On the contrary the defendant is want to fence the house by making boundary attached to the house for the purpose of security and protection from tress-passers. Hence I am of the view that the plaintiff has not brought out prima facie case and he will not suffer irreparable loss. The case of plaintiff is also having shows the balance of convenience do not lies in his favour. Hence, I answer as to point no. 1 to 3 in the 'negative'. In answer point no. 4, I pass the following order.

<u>ORDER</u>	
1.	Application is rejected.
2.	Cost in main cause.
3.	Status quo order vide Exh. 15 stand vacated.
<u>(Dictated and pronounced in open court)</u>	

Palus.
Date- 19/10/2024

(I. A. Y. A. Khan)
Jt.Civil Judge Jr.Dn., Palus

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original.

Name of Stenographer : Mrs. Jyoti A. Salunkhe
Stenographer Grade III

Court : Jt. C.J.J.D. & J.M.F.C., Palus

Date : 19/10/2024

Signed by P. O. on : 19/10/2024

Uploaded on : 21/10/2024