

Recd. On : 16/01/2009

Regd. On : 23/03/2009

Order On : 29/08/2013

Duration : 04Y. 07M.13D.

IN THE COURT OF CIVIL JUDGE S. D., PANDHARPUR

DISTRICT – SOLAPUR.

(Presided over by Shri.P.J.Patil, Civil Judge Sr. Division.)

(At - Pandharpur)

Regular Civil Suit No. 5/2009

Exh. No.

Bhairu Gangaram Ingole	]	
Age – 70 years, Occupation-Bhikshuki	]	Plaintiff
R/o. At Post Sangola, Tal.Sangola,	]	
Dist. Solapur.	]	

vs.

- | | | | |
|----|-------------------------------------|---|-------------------|
| 1) | Baban Bhimrao Linge |] | |
| | Age – Adult, Occupation-not known |] | |
| | R/o. At Post Sangola, Teli Galli, |] | |
| | Tal.Sangola, Dist.Solapur |] | |
| 2) | Rahiman Rajak Maneri |] | |
| | Age – Adult, Occupation-not known |] | |
| | R/o. At Post Sangola, Maneri Galli, |] | |
| | Tal.Sangola, Dist.Solapur |] | Defendants |
| 3) | State of Maharashtra |] | |
| | Through, The Collector, |] | |
| | Collector Office, Solapur |] | |
| 4) | Superintendent, |] | |
| | D.I.L.R.Office, Collector Office, |] | |
| | Solapur. |] | |

5) The T.I.L.R.]
Records Office, Sangola, Tal.Sangola]

Suit for mandatory injunction
and for permanent injunction.

Advocate for plaintiff : Shri. S.A.Navale
Advocate for Deft. No.1 : Exparte
Advocate for Deft. No.2 : Shri. R.B.Behare
Advocate for Deft.Nos. 3,4 & 5 : Shri. V.K. Patil

:: JUDGMENT ::

(Delivered on 29th August, 2013)

1) The plaintiff filed the suit against the defendant Nos. 1 to 5 to delete wrongly recorded 42 Sq.Mtrs area in City Survey No. 1930, and to record area 104.55 Sq.Mtrs. in City Survey No. 1930, and for cancellation of independent City Survey No. 3189, made in the name of defendant No. 1, and now recorded in the name of defendant No. 2, and for issuance of such mandatory injunction to the defendant Nos. 4 and 5, and for issuance of permanent injunction, restraining the defendant Nos. 1 and 2 for interfering in the possession of the plaintiff on City Survey No. 1930 themselves or

through other persons.

2) In it, the plaintiff stated that, he is owner of the suit property having area 104.55 Sq.Mtrs., i.e. having area 1125 Sq. feet, having length South-North 25 feet and East-West 45 feet. City Survey No. 1930 , House No. 946/A, situated at Taluka Sangola, District Solapur. The plaintiff purchased the suit property from defendant No. 1 by registered sale deed, dated 23/04/1985 for Rs. 7,000/-. Since then he and his family members are in possession of the suit property. In the sale deed, East-West 13.72 Mtrs and width South North 9.14 Mtrs. total area 125 Sq.Mtrs is mentioned as sold to the plaintiff by the defendant No.1. It is not the area of the said City Survey Number. The city survey number is having total area 1125 Sq.ft, means 104.55 Sq.Mtrs, the plaintiff has made construction in it by his expenditure. The defendant No. 1 purchased the suit property on 16/09/1963 from Gajabai Kondiba Navale (Murali) by the sale deed in the year 1963. Gajabai Kondiba Navale sold the defendant

No. 1 the area of house number 946, having length East-West 45 feet and width North-South 25 feet, total area 1125 Sq.feet. This suit property is sold by defendant No. 1 to the plaintiff. The complete area of City Survey No. 1930 is sold to the plaintiff. No any land is remaining in this City Survey Number. The defendant No. 1 filed Appeal S.R.No. 93/95 to the defendant No. 4, in it, it is mentioned that, the defendant No. 1 sold the above mentioned area to the plaintiff. The City Survey No. 1930 property is having East-West length 25 mtrs., South-North width 20 mtrs, and in the city survey scheme, the measurement was not done, and the map was not prepared. Therefore, to obtain the map, as per the measurement, the appeal is filed. The inquiry is made in the appeal. It was decided on 22/06/1995. The re-measurement was made of City Survey No. 1930, and for correction of map the case is sent to the T.I.L.R. Sangola to make re-measurement and to take the decision. The T.I.L.R, Sangola made collusion with defendant No. 1 in

re-inquiry No. 14/1995, and deleted the area in City Survey No. 1930, sold to the plaintiff, and decided that in the City Survey Number on west side 36 Sq.Mtrs land is remaining, and had given order to give separate city survey number to the said area of 36 Sq.Mtrs., and directed to record it in the name of defendant No. 1 on 24/06/1996. This is wrong Judgment. The plaintiff was sold by the defendant No. 1, 1125 Sq.ft land, means 104.55 Sq.Mtrs. land, while in the extract of plaintiff's only 42 Sq.Mtrs. land was recorded, and the defendant No. 1 was not having any land in his possession remaining in the said city survey number. The separate City Survey No. 3189 of 36 Sq.Mtrs. was made in the name of the defendant No. 1. The plaintiff filed the Appeal S.R.No.86/99 to the defendant No. 4. The appeal is decided in favour of plaintiff on 3/11/2006, stating that in this city survey number, 104.55 Sq.Mtrs. land should be recorded. As such, In Re-Inquiry No. 14/95, the Judgment given by T.I.L.R Sangola is illegal. No any land remains in

the name of defendant No. 1, in the City Survey No. 1930 on the west side. The plaintiff filed S.R. No. 430/2004 against the said Judgment. It is pending. In the mean time, taking the help of illegal decision given in Re-Inquiry No. 14/95, and by taking advantage of separate extract of City Survey No. 3189 of area 36 Sq.Mtrs., made in the name of defendant No. 1. The defendant No. 1 sold the said property by the sale deed to the defendant No. 2. The defendant No. 2 is witness of on sale deed made by the defendant No. 1 in favour of the plaintiff. The defendant No. 2 is knowing that, the plaintiff purchased City Survey No. 1930, still the defendant No. 2 purchased by the illegal sale deed, dated 15/03/2002 the property from the defendant No. 1. The land mentioned in the sale deed is not in existence on west side of land City Survey No. 1930. The defendant No. 2 had not obtained any possession of the land with the help of said sale deed. The defendant No. 1 filed R.C.S.No. 111/88 in the Court of C.J.J.D., Sangola against defendants. It was dismissed,

vide the order on the pursis at Exh. 29 in that case. The S.R.No. 86/1999 is decided by the defendant No. 4 in the favour of the plaintiff. The plaintiff is in possession of 104.55 Sq.Mtrs. area. The correction is not being made. The defendant No. 2, on the strength of illegal sale deed, made by defendant No. 1 in favour of defendant No. 2 is interfering in the possession of the plaintiff over City Survey No. 1930. The plaintiff has given notice to the defendants, dated 13/11/2008. The defendants received notice. They have not acted as per the notice. They are trying to interfere in the possession of the plaintiff over the suit property. They have not made corrections in the area mentioned on the extract of the suit property. Therefore, plaintiff filed present suit against defendants. The plaintiff prayed that, the wrongly recorded area 42 Sq.Mtrs. in City Survey No. 1930 should be deleted and instead of it, the area 104.55 Sq.Mtrs. should be recorded on the extract, and the separate City Survey No. 3189 made in the name of the defendant No. 1, having the

name of defendant No. 2 at present, should be cancelled.

The said Mandatory Injunction order should be given to the defendant Nos. 4 and 5. The defendant Nos. 1 and 2 should be restrained by the Permanent Injunction order from the interfering in the possession of plaintiff over the suit land City Survey No. 1930, themselves or through other persons.

3) The suit proceeded exparty against the defendant No. 1 and without written statements against the defendant Nos. 3, 4 and 5.

4) The defendant No. 2 had given written statement in the case contesting the suit filed by the plaintiff. It is at Exh. 19 in the case. In it, the defendant No. 2 stated that, on 19/09/1963 Smt. Gajabai Kondiba Navale sold the House Number 946, by sale deed No. 1776 to defendant No. 1 Baban Bhimrao Linge, and in city survey scheme, in the year 1980, the name of Baban Bhimrao Linge is recorded to the suit property.

Thereafter, defendant No. 1 Baban Bhimrao Linge sold suit property to the plaintiff on 23/04/1985 by sale deed No. 683 for Rupees 7,000/-. In the sale deed, dated 19/09/1963 of House No. 946, East-West length 45 feet, and South-North 25 feet are mentioned still in the city survey scheme wrong measurements was made. The area was shown less. The defendant No. 1 filed Appeal to Superintendent, D.I.L.R, Solapur, i.e. Appeal S.R.No. 93/95 is filed against plaintiff, and the Government of Maharashtra. The appeal was decided on merits, and Superintendent, D.I.L.R. Solapur, partly allowed the appeal of defendant No. 1 and passed order to sent the case for re-inquiry of the suit property, as per the sale deed of the year 1963, and to correct the map, to T.I.L.R. Sangola, and directed that the T.I.L.R. Sangola should make re-inquiry as per the rules, and give decision. Accordingly, T.I.L.R. Sangola sent notices to the plaintiff and defendants, and made spot inspection on 21/11/1995. At that time, it was noticed that in sale deed

of 19/09/1963, the east-west length was shown 45 feet, and south-north length was shown 25 feet, and while it was the complaint of defendant No. 1 that, in city survey scheme, wrong measurements were made, and less area was shown. The measurements of Municipal House No. 946 are taken as per the sale deed. It was noticed that, on the west side of City Survey No. 1930 the empty space $6 \times 6 = 36$ Sq.Mtrs. was there in the possession of defendant No. 1. Accordingly, T.I.L.R. Sangola made re-inquiry and by order of Re-Inquiry No. 44/1995 deducted the area from City Survey No. 1930, sold to the plaintiff, and to the remaining area, as the name of original owner was Baban Bhimrao Linge. Therefore, to the remaining area of sale deed of year 1963, the T.I.L.R. Sangola had given separate city survey number 3189 of area 36 Sq.meters, and recorded the name of the defendant No. 1 to it, and had given Judgment, accordingly on 27/06/1996, and as per the order of T.I.L.R. Sangola the separate extract was made of City Survey No. 3189,

having area 36 Sq.Mtrs. Thereafter, on 15/03/2002 for the price of Rs. 60,000/- the defendant No. 2 purchased 36 Sq.Mtrs.open space area of City Survey No. 3189 from the defendant No. 1, and the name of the defendant No. 2 is recorded to open space on City Survey No. 3189, since then the defendant No. 2 is the owner and possessor of City Survey No. 3189 open space, and the defendant No. 2 had made constructions in the open space, as such the defendant No. 2 is in possession of the City Survey No. 3189, 36 Sq.Mtrs. area. The plaintiff is not having any concern with it. The defendant No. 2 had not obstructed in the possession of City Survey No. 1930. The plaintiff filed false case against the defendant No. 2 for harassing him only. The suit filed by the plaintiff should be dismissed with costs.

5) In this case, the plaintiff deposed himself at Exh.25 to supporting his case. At Exh. 46 the plaintiff filed his oral evidence closing pursis .

6) In this case, the defendant No. 1 deposed himself at exh. 53 to supporting his case. At Exh. 58 the defendant No. 2 filed his oral evidence closing pursis.

7) At Exh. 61 the plaintiff filed his written arguments. At Exh. 62 the defendant No. 2 filed his written arguments.

8) At Exh. 23 my learned Predecessor framed following issues. My findings on them are as follows for the reasons stated below.

Sr. No.	Issues	Findings.
1]	Whether the plaintiff proves that, in city survey number ... 1930, the wrongly written 42 Sq.Mtrs. area should be deleted, and area 104.55 Sq.Mtrs. should be recorded ?	“In the Negative”.
2]	Whether the plaintiff proves ... that, the city survey No. 3189, recorded in the name of the defendant Nos. 1 and 2 should be cancelled ?	“In the Negative”.

- 3] Whether the plaintiff proves ... **“In the Negative”.**
that, the defendant Nos. 4 and
5 should be restrained by
permanent injunction order ?
- 4] Whether the plaintiff proves ... **“In the Negative”.**
that the defendant Nos. 1 and 2
are interfering in the
possession of the plaintiff over
city survey number 1930 ?
- 5] What order and decree ? ... **As per the final order.**

: Reasons :

9) **As to Issue Nos.1 & 2:-**

These issues are interlinked. Therefore, I am discussing them together.

On these issues the plaintiff stated that, he is the owner of suit property, having area 104.55 Sq.Mtrs. i.e. area 1125 Sq.Mtrs., having length South-North 25 feet, and East-West 45 feet, City Survey No. 1930, House No. 946/A, situated at Sangola, Dist. Solapur. The plaintiff is in possession of 104.55 Sq.Mtrs. area. The defendant are interfering in the possession of the plaintiff over the suit

property. The defendants should be directed to delete wrongly record 42 Sq.Mtrs. area in City Survey No. 1930, and to record 104.55 Sq.Mtrs area in the City Survey No. 1930, and the defendants should be directed to cancel the independent City Survey No. 3189 made in the name of the defendant No. 1, and now recorded in the name of defendant No. 2, and such mandatory injunction should be issued against the defendant Nos. 4 & 5, and for issuing permanent injunction restraining the defendant Nos. 1 & 2 from interfering in the possession of the plaintiff on City Survey No. 1930, themselves or through other persons.

10) The defendant No. 2, on these issues stated that, the defendant No. 1 Baban Bhimrao Linge sold the suit property to the plaintiff on 23/04/1985 by Sale Deed No. 683/- for Rs. 7000/-. In the sale deed, dated 19/09/1963 of House No. 946 East-West length 45 feet, and South-North 25 feet are mentioned. Still in the city survey number wrong measurements were made. The

area was shown less. The defendant No. 1 filed Appeal S.R.No. 93.95 to the Superintendent, D.I.L.R., Solapur against the plaintiff and the Government of Maharashtra. The appeal was decided on merits, and Superintendent, D.I.L.R. Solapur, partly allowed the appeal of the defendant No. 1, and passed the order to sent the case for re-inquiry of the suit property, as per the sale deed of the year 1963, and to correct the map to T.I.L.R. Sangola. The T.I.L.R. Sangola sent notices to the plaintiff and defendants and made spot inspection on 21/11/1995, and noticed that in the sale deed, 19/09/1963 the East-West length was shown 45 feet, and North South length was shown 25 feet, and while it was the complaint of the defendant No. 1 that in the city survey scheme wrong measurement was made, and less area was shown. The measurement of Municipal House No. 946 are taken as per the sale deed. It was noticed that, on the west side of the City Survey No. 1930, the empty space $6 \times 6 = 36$ Sq.Mtrs. was there in possession of the defendant No.1.

Accordingly, T.I.L.R.Sangola made re-inquiry, and by order of Re-inquiry No. 44/95 deducted the area from the City Survey No. 1930, the area sold to the plaintiff, and to the remaining area, as the name of the original owner was Baban Bhimrao Linge. Therefore, to the remaining area of the sale deed of the year 1963, the T.I.L.R. Sangola had given separate City Survey No. 3189 of area 36 Sq.Mtrs, and recorded the name of the defendant No. 1 to it, and had given Judgment accordingly on 27/06/1996. As per the order of the T.I.L.R, the separate extract was made of City Survey No. 3189, having area 36 Sq.Mtrs. Thereafter, on 15/03/2002 for the price of Rs. 60,000/-. The defendant No. 2 purchased 36 Sq.Mtrs. open space area of City Survey No. 3189 from the defendant No. 1, and the name of the defendant No. 2 is recorded to the open space in City Survey No. 3189. Since then the defendant No. 2 is the owner and possessor of City Survey No. 3189 the open space, and defendant No. 2 had made construction in the open space. The plaintiff is not

having any concern with it.

11) The plaintiff filed the xerox copy of Judgment given in Appeal S.R.No. 86/99 in support to his case on these issues. However, it is only xerox copy . It is not certified copy. It is not having any evidential value. It is the case of the plaintiff that, he filed the suit based on Judgment given by the Superintendent, D.I.L.R.Solapur, in the Appeal S.R.No. 86/99. However, as pointed out by the learned Advocate No. 2 in his arguments, this is only xerox copy, and it is not having any evidential value.

12) No any explanation is forth coming from the plaintiff, as to why he had not filed the certified copy of the order of the Superintendent, D.I.L.R., Solapur given in Appeal S.R.No. 86/99.

13) As against these documents, the defendant No. 2 filed in the case, the certified copy of order given by the Superintendent, D.I.L.R. Solapur in Appeal S.R.No. 93/95, dated 22/10/1995. It is the certified copy of order, it is

filed in the case at Exh. No. 51. The Superintendent D.I.L.R., Solapur had partly allowed the appeal filed by the defendant No. 1 Baban Bhimrao Linge, and had directed the T.I.L.R. Sangola to make re-inquiry about the City Survey No. 1930, as per the sale deed of the year 1963, and to make correction in the map. Accordingly, The T.I.L.R. Sangola had given notices to the Appellant and Opponent and, on 21/11/95 made inspection of the spot. The T.I.L.R. Sangola made measurements of House No. 946, and noticed that, on west side of City Survey No. 1930 there is 6 Meters x 6 Meters = 36 Sq. Meters open space. It is in the '*vahivat*'. It is noticed in the measurements, it is of City Survey No. 1930, the holder of Survey No. 1930 sold it to the plaintiff Bhairu Gangaram Ingole. The name of original owner Baban Bhimrao Linge is not there. Therefore, to the remaining land of sale deed of 1963, separate survey number is given, and in the column of holder the name of Baban Bhimrao Linge should be entered. The property is of '*Gavthan*' area, by abolition of '*Gavthan Sara*' the holding (A) should be recorded, and the concerned persons should be

informed accordingly. The panchnama is attached to it. In it, it is stated that, the measurements are taken of land of Baban Bhimrao Linge in the presence of Pancha Chandrakant Pandurang Thorbole and Ashok Mukteshwar Chandule, residents of Sangola on 21/11/1995, by visiting the property. The Baban Bhimrao Linge purchased the property east-west 45 feet, width south-north 25 feet. The appeal is received in the office for re-inquiry. The notices are given to Bhairu Gangaram Ingole and the appellant. Bhairu Gangaram Ingole is not residing in the purchased property.

14) The defendant No. 2 also filed in the case the copy of Akhiv patrika of City Survey No. 3189. It is a certified copy. It is at Exh. 32 in the case.

15) Both these documents filed by the defendant No. 2 are supporting the case of defendant No. 2 on these issues.

16) The plaintiff in the cross-examination of the defendant No. 2 tried to put to the defendant No. 2 the

case, stating that the defendant No. 2 appeared in the case, in city survey office, through Shri. Lale, the retired employee of the city survey office, and in last seven years, Shri. Lale prepared false stamps, and false extracts of city survey office, and police action was taken against him, and it was revealed in the police inquiry that, Shri. Lale collected Crores of rupees, and Shri. Lale died by heart-attack because of police inquiry.

17) However, it is pertinent to note here that, such case is not put up by the plaintiff, in his plaint.

18) Such case is put up only by the plaintiff in the above mentioned cross-examination of the defendant No. 2, the defendant No. 2 denied all these suggestions in his cross-examination.

19) The rule of evidence is that, first to plead and then to lead the evidence, the plaintiff had committed the breach of it.

20) As such, as this case is not put up by the plaintiff in the plaint itself, At this stage it can not be accepted, and it has to be ignored only.

21) The plaintiff himself, while deposing in the case on these issues, in his evidence at Exh. 25 in the cross examination stated that, it is true that the defendant filed Appeal No. 93/95 against the plaintiff and the Maharashtra Government, in the Court of D.I.L.R.Solapur. It is true that, the appeal of defendant No. 1 is partly allowed. It is true that, the order is passed for making re-inquiry of City Survey No. 1930. It is true that, The T.I.L.R. had given notices to the plaintiff and defendants, and had made spot inspection on 21/11/1995. It is true that, in the measurement, it was noticed that 36 Sq.Mtrs. area is less.

22) These statements in the cross examination of the plaintiff have reduced the evidential value of his evidence from the point of view of the plaintiff on these

issues. As such, I hold that, the evidence of the plaintiff is not much use to prove the case of the plaintiff, on these issues.

23) As stated above, the plaintiff has filed in the case the xerox copy of order of Superintendent, D.I.L.R. passed in Appeal No. 86/99. It is only xerox copy. It is not certified copy. It can not be read in the evidence. It is not any evidential value, as pointed out by the learned Advocate of the defendant No. 2, in his arguments as stated above.

24) In these circumstances, I hold that the plaintiff fails to prove that in City Survey No. 1930, wrongly written 42 Sq.Mtrs. area should be deleted and area 104.55 Sq.Mtrs. should be recorded. As such, I answer to issue No. 1 “*in the negative*”.

25) In these circumstances, I further hold that, the plaintiff fails to prove that, the City Survey No. 3189 recorded in the name of the defendant No. 1 and 2 should

be cancelled. As such, I answer to issue No. 2 “*in the negative*”.

26) **As to Issue Nos. 3 & 4 :-**

These issues are interlinked. Therefore, I am discussing them together.

On these issues the plaintiff stated that, the defendant Nos. 4 & 5 should be restrained by the permanent injunction order, and the defendant Nos. 1 and 2 are interfering in the possession of the plaintiff over the suit property, City Survey No. 1930.

27) On these issues the defendant No. 2 stated that, they are not interfering in the possession of the plaintiff over City Survey No. 1930, and they are in the possession of the separate City Survey No. 3189, and they have made construction there.

28) The plaintiff himself, while deposing in this case on these issues, in his evidence at exh.25, in the cross examination stated that, it is true that there are two

doors, it is true that, on the south side there is one door.

29) These statements in the cross examination of the plaintiff support the case of the defendant No. 2, on these issues that, the City Survey Nos. 1930 and 3189 are two separate properties, and the defendant No. 2 is the owner and possessor of property City Survey No. 3189, and he had made construction in it, and that the plaintiff is not having any concern to it.

30) Moreover, as stated above, the plaintiff fails to prove his case on issue Nos. 3 and 4.

31) In these circumstances, I hold that the plaintiff fails to prove that, the defendant Nos. 4 and 5 should be restrained by permanent injunction order. As such, I answer to issue No. 3 “*in the negative*”.

32) In these circumstance, I further hold that, the plaintiff fails to prove that the defendant Nos. 1 and 2 are interfering in the possession of the plaintiff over City

Survey No. 1930. As such, I answer to issue No. 4 “*in the negative*”.

As such, I proceed to pass the following order.

: O R D E R :

1. The suit is dismissed with costs.
2. Decree be drawn up accordingly.

Date : 29.08.2013.

(P.J.Patil)
**Civil Judge Sr. Division,
Pandharpur.**