

ORDER BELOW EXH.5**IN****R.C.S.No. 89 of 2021**

(CNR No.MHSO06-0009592021)

(IA No. 1/2021)

1] This is an application to grant temporary injunction so as to restrain defendants from causing obstruction to the peaceful possession of the plaintiff.

In nutshell the case of the plaintiff's is as follows:-

2] Gat No.454/2 admeasuring 2 H. 02 R is the suit property of the plaintiff. While Gat No.456/1 and 456/2 are properties of defendants. (The property of plaintiff is here-in-after mentioned as the 'suit property'.) The plaintiff is cultivating crops like sugarcane, wheat etc. in the suit property. There is Bandh between the land of the plaintiff and adjacent land of defendants. Defendants filed a measurement proceeding No.139/2021. They in collusion with Government authorities without issuing notice to the plaintiff, falsely prepared a measurement map. It is showing an encroachment of 27 R committed by the plaintiff over the properties of defendants No.3 to 5. Now on count of said false measurement map in collusion with Government authorities and in police aid, defendants are trying to take possession of 30 R land in the suit property. The plaintiff will suffer irreparable loss, if defendants do so. Hence, the temporary injunction is prayed.

3] Only defendants No.3 to 5 filed say vide Exh.37. They have denied material contentions in the plaint. It is their specific case that they have purchased Gat No.456/1 and 456/2. They are in possession of said land. On Northern side of both these lands, the suit property is situated.

4] In year 2006 the defendant No.3 measured Gat No.456/1 from one private measurer. It was found that its area was deficit. So also, area of Gat No.456/1 is lesser than record. The plaintiff has committed an encroachment over both these lands. So, defendants filed a measurement proceedings in T.I.L.R office, Pandharpur. After issuing notices and following proper procedure, measurement was carried out. The plaintiff even obstructed the measurement process. The boundaries were fixed and it was found that 27 R encroachment has been committed by the plaintiff on the lands of defendants. The plaintiff is refusing to hand over the possession of encroached area. Defendants asked for the possession from the plaintiff through respected people in the village. Therefore, defendants will suffer irreparable loss, if injunction is granted. Hence, same may be rejected.

5] Considering above facts, following points arise for determination and findings are recorded on them for reasons stated below it.

	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff has made out prima facie case ?	Yes.
2.	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3.	Whether the plaintiff will suffer an irreparable loss, if injunction is refused ?	Yes.
4.	What order?	The application is allowed.

= R E A S O N S =

6] Heard both the learned advocates. Perused the record. The learned advocate for the plaintiff submitted that defendants are trying to illegally

dispossess the plaintiff. Hence, an injunction is necessary. While learned advocate for defendants No.3 to 5 submitted that they are having legal right to recover the possession of encroached area. Hence, an injunction cannot be granted.

As to Points No.1 to 4:

7] As these points are interlinked, those are discussed together. The 7/12 extract of the suit property and property of defendants are filed on the record. It is not disputed that the plaintiff is owner of the suit property and defendants are having lands in Gat No.456/1 and 456/2. It is also admitted that defendants have purchased it in the year 2003 and 2010. The copy of measurement map is filed on the record. It clearly shows that the plaintiff has committed 27 R encroachment on the land of defendants. Notices are stated to be issued to the parties.

8] The copy of F.I.R. filed by the plaintiff against defendants about alleged assault on the count of possession of property is filed on the record. Photographs are also filed on the record by the plaintiff. These prima facie substantiated an obstruction.

9] Defendants have filed documents along with list vide Exh.36. The letter of Tanta Mukti Samiti that it could not settle the matter between the parties is filed on the record. The application for measurement and proceedings of whole measurement are filed. Statements recorded during measurement are filed on the record. The police aid was provided for measurement and panchnama was also prepared regarding measurement by T.I.L.R.. The copies of notices issued by both the parties to each other are also filed on the record.

10] In view of above said documents and admitted facts, it is prima facie clear that even after alleged measurement in year 2006 by defendants from a private measurer, they have not filed any suit so as to remove the encroachment and to recover possession. It is admitted case that defendants purchased their lands in year 2003 and 2010. Hence, either before executing the sale deeds, or immediately thereafter they should have carried out the proper measurement. If the plaintiff was denying for the same, they could have filed the suit regarding the same.

11] If letter dated 24.10.2021 of the defendant No.3 to police is perused, it is clear that he asked for police aid to recover the possession of alleged encroachment. Now, prima facie considering case of defendants about the encroachment since year 2006, or even prior to their sale deeds, the possession of the plaintiff is settled one. Even if for sake of an argument, it is accepted that whole measurement is carried out properly, defendants should recover the possession by filing the suit and can not take law in their hands. It is not for the police authority to grant such possession of land without decree in view of such measurement. Same is permissible only under order of competent Court.

12] Considering the F.I.R and photographs filed by the plaintiff prima facie there is an obstruction and there is also serious issue of law and order due to dispute of parties. In such circumstances, even if whole measurement proceedings is accepted, only mode available for the defendants is to recover the possession by filing the suit to remove the encroachment. It is necessary that map of alleged encroachment should be proved for that purpose. It is settled law that the map of measurement even after following all the procedure is not final, or not conclusive document. It

should be found to be reliable and the exact encroachment area should be proved as per Indian Evidence Act. Even in the suit if commissioner is appointed, it is necessary that he should be examined and map should be proved. Unless and until said map is proved, even Civil Court does not pass the decree to remove an encroachment. Hence, on the basis of alleged measurement directly possession cannot be taken by the defendants. Same would be taking law in their hands.

13] The map prepared even in the present case should be proved as per Indian Evidence Act to be accurate. Then only it can be relied for recovery of possession. It can be done only by filing suit, or filing counter claim in the present matter. But, defendants admittedly neither filed the suit, nor filed the counter claim. The law on the point of map should be proved for any cause is settled one. In this regard Section 83 of the Indian Evidence Act, 1872 provides that the Court shall presume maps, or plans purporting to be made by the authority of the Central Govt. or any State Govt. were so made and are accurate; but maps or plans made for the purpose of any cause must be proved to be accurate.

The map in the present case is for the cause of alleged encroachment. In this regard in **Kashinath Chindhuji Shastri vs Haribhau Nathuji Bawanthade (2004 (2) MhLj 722)**, it is observed by Their Lordships that

“....6. Bare reading of the aforesaid provision would reveal that the maps or plans made for the purpose of any cause must be proved to be accurate. The onus of proving that such a map is accurate lies on the party who produced it. The maps must be proved by the person who has prepared them. They are post litem motes and lack necessary trustworthiness. Where the maps are made for the purpose of a suit there is, even apart from fraud which may exist, a tendency to colour, exaggerate and favour which can only be countenanced by swearing the maker to the trust of his plan. Hence, there is no presumption of

accuracy in respect of the map or plan which is made for a particular cause and it goes without saying that a map prepared for the purpose of a particular suit must, therefore, be duly proved and it is not admissible in evidence in absence of proof of its accuracy. In any case, in which there is a dispute about an encroachment or dimension of a site, the first essential is to get an agreed map and if the parties cannot agree on one, a Commissioner must be appointed to prepare the same and/or subsequent reference in the pleadings or judgment to place the mark on a map should be referred to this map which must be attached to the decree and signed by the Judge...”

14] Considering the pleadings itself, it is clear that even if the possession of the plaintiff is accepted as an encroachment, it is since long time. He is cultivating the suit property, since his forefathers. Hence, even if accepted as an encroachment, his possession would be settled. Defendants failed to take any action since their sale deeds, or even after alleged private measurement in year 2006. Therefore now suddenly they can not disturb settled possession of the plaintiff, without filing suit to recover the encroached area. In this regard law on the point settled possession is clear.

The law is elucidated in the case of **Rame Gowda (D) by Lrs. Vs. M.Varadappa Naidu (D) by Lrs. (2004 SCC (1) 769)** by Full Bench of Honorable Apex Court that

“...10. It is thus clear that so far as the Indian Law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior by use of force.....”

15] Hence, considering all these above said facts, the prima facie case lies in favour of the plaintiff, who is in peaceful settled possession since long time. The plaintiff will suffer irreparable loss, if an injunction is not granted and his settled possession is disputed. The balance of convenience also lies in favour of the plaintiff. Defendants have nothing, but only alleged map of encroachment in their favour. It is still not proved in any Court of law. Hence, neither there is prima facie case, nor balance of convenience lies in their favour. They shall not suffer irreparable loss, if injunction is granted. On the contrary, they have appropriate remedy to file proper proceedings in the Court of law. Therefore, I answer points No.1 to 3 in the affirmative and in answer to point No.4 following order is passed.

ORDER

1. The application is allowed with costs.
2. Defendants are temporarily restrained from obstructing the peaceful possession of the plaintiff over the suit property, without following due process of law.

Pandharpur
Date:-26.03.2022

Civil Judge Senior Division,
Pandharpur

CERTIFICATE

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

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Pandharpur
Date : 26-03-2022

Order/Judgment signed
by the Presiding Officer on : 26-03-2022

Order uploaded on : 28-03-2022