

MHST01-000213-2023



**IN THE COURT OF DISTRICT JUDGE-2, SATARA : AT SATARA
REGULAR CIVIL APPEAL No.11 of 2023**

Somnath Brijalal Bhatiya and others ...Appellants

V/s.

Ankush Bhagwan Gore and others ...Respondents

Mr.D.I.S. Mulla, Advocate for the appellants.

Mr.A.S. Khot, Advocate for respondent No.1 & 3.

Mr.A.K. Shinde, Advocate for respondent No. 2.

**Coram : Mr. S. R. Tamboli,
District Judge-2, Satara.**

:: ORDER BELOW EXH.82 ::

01. In the instant application appellants prayed to restrain respondent no. 1 and 3 or any person on their behalf from changing nature of the suit property.

02. Mr.D.I.S. Mulla, the learned Counsel for the appellants submitted that appellants filed R.C.S.No.115/2003 and prayed to restrain defendants from making encroachment over the suit property as well as from making change in the nature of suit property. Appellants are in possession of revision survey No.84/8B. Respondents didn't dispute the title of the appellants to the suit property. The learned Trial Court admitted the title of the appellants. However, without taking into consideration the actual location of the suit property, the learned Trial

Court dismissed the suit. During the pendency of suit, as per the direction of the Court, suit property was measured. The map Exh.238 is proved in the evidence. As per said measurement, suit property is situated adjacent to the Highway. In fact, the portion of the land of the appellants acquired for Highway. By making collusion with revenue officers, respondent No.1 measured the suit property on 28.08.2023 illegally and changed the location of the suit property. Appellants have received one more notice for fixation of the boundaries. The respondents are creating record by making sub-division of survey No. 84/8A, at the place of suit property which is adjacent to the Highway. With the help of measurement, respondents want to change the location of the suit property. Under the pretext of measurement of the sub-division of revision survey No.84/8B, respondents want to take possession of the suit property. Hence, he prayed that respondents be restrained from changing the nature of the suit property with the help of measurement.

03. Per contra Mr.A.S. Khot, the learned counsel for respondent Nos.1 & 3 submitted that appellants filed the suit in regard to the land survey Nos.84/8B & 84/8C. The survey No.84/8A is not the subject matter of the suit. Respondent is the owner of survey No.84/8A. Therefore, respondents have every right to measure the said property as well as to make its sub-divisions. Appellants are relying on the map dtd. 02.11.2022. However, in said measurement, only talathi was present. Such map is not admissible in evidence. Appellants are not concerned with the land of survey No.84/8A. Map at Exh.238 is disbelieved by the learned Trial Court. The Dy. Superintendent of the land record is not

the party to the proceeding. Therefore, injunction cannot be issued against them. Application of the appellants is not maintainable. Appellants also filed similar application at Exh.31. They did not conduct the application. This application is not maintainable. Hence, he prayed to dismiss the application.

04. Mr.A.K.Shinde, the learned counsel for respondent No.2 submitted that appellants are not concerned with the survey No.84/8A. Appellants would have conducted the application at Exh.31. Already respondent Nos.1 & 3 measured the survey No.84/8A. It is situated near the Highway. They want to measure its sub-division. It will not cause any prejudice to appellants.

05. In view of the rival contentions, following points for my determination. My findings and reason thereon are as under :

<i>Sr.No.</i>	<i>POINTS</i>	<i>FINDINGS</i>
1.	Whether appellants have made out prima-facie case ?	In the affirmative.
2.	Whether balance of convenience lies in favour of the appellants ?	In the affirmative.
3.	Whether appellants are entitled for the relief of temporary injunction ?	In the affirmative.
4.	What order ?	As per final order.

: REASONS :

Point Nos.1 to 3 :

06. It is undisputed that survey No.84/8 was admeasuring 53 acer. As per the compromise decree passed in Civil Suit No. 287/1951, it divided in three parts namely, survey Nos.84/8A, 84/8B & 84/8C. It is undisputed that survey No. 84/8A is owned by respondent Nos.1 & 3.

Revision survey No. 84/8B is owned by appellants. The dispute is about location of the suit property. As per contention of the appellants, revision survey No. 84/8B is situated near the Highway. The contention of respondent Nos.1 and 3 is that revision survey No.84/8A is situated near to the Highway.

07. During the pendency of suit, map at Exh.238 was prepared. As per said map, revision survey No.84/8B is situated near to the Highway. Respondents produced map along with Exh.73. It shows that revision survey No.84/8A is situated near to the Highway. Appellants have produced one more map along with Exh.79. Said application is still not decided.

08. The maps produced on record clearly shows that the center of the controversy is about the situation of the suit property. Appellants are claiming that the suit property situated near to the Highway while respondents claiming their property is near to the Highway. Therefore, though survey No.84/8A is not the subject matter of the suit, respondents are claiming the location of the suit property under the pretext of the measurement of survey No.84/8A. Therefore, appellants have made out fair case for trial.

09. Two maps have been prepared contrary to each other. Appeal is pending before this Court. Therefore, it will not be proper to make again sub-division of the land situated near to the Highway. There can be more divisions of the sub-division. It has no end. It will create complications in the suit. Said issue is pending for adjudication in this appeal. Hence, respondent Nos.1 & 3 needs to be restrained from changing the nature of the suit property, under the pretext of

measurement of land survey No.84/8A. If respondents are not restrained from carrying said activity, it will cause hardship to the appellants. Balance of convenience lies in the favour of appellants. Hence, respondents needs to be restrained from changing the nature of the suit property under the pretext of the measurement. So, I answer point Nos.1 to 3 in affirmative. In the result, I pass the following order :

Order

1. Application is allowed.
2. Respondent Nos. 1 and 3 are restrained from making change in the suit property by carrying any measurement of the suit property whose location has been shown in the map (Exh. 238 in RCS No. 115/2003). They are restrained from carrying any measurement activity near to highway in the suit property without permission of the Court till final disposal of the appeal.

Date: 05.07.2025
Place : Satara.

(S.R.Tamboli)
District Judge-2 &
Addl. Sessions Judge, Satara