

ORDER BELOW EXH.5 IN R.C.S. NO. 407/2015

1. Perused application along with affidavit. Gone through record. Heard learned Advocates for parties at considerable length.

2. Present application is filed by plaintiffs under Order 39 Rule 1 & 2 of Code of Civil Procedure for temporary injunction against defendants in respect of property having land Gat no. 1/C ad-measuring 8.5R having city survey no. 159 and having constructed houses nos. 74 & 778 respectively situated in village Kapil, Tal. Karad, which is described in para 1A of the plaint and open space admeasuring 722 sq.mts. having city survey no. 157 situated towards northern side of property described in para 1A of the plaint and having road of east-west 18 feet and south-north 70 feet for approaching property described in para 1A of the plaint (for short 'suit property').

3. According to plaintiffs, property described in para 1A of the plaint was owned and purchased by them and the suit property is situated towards its northern side which is an open space. It is further contended that plaintiffs were possessing the suit property since long and they were using the same for keeping firewood and heap of grass and for tying the cattle. According to plaintiffs, the road in the suit property was kept by them for approaching the property described in para 1A of the plaint. In the year 1991, the

work of city survey started in village Kapil. Officers of city survey visited the suit property and after recording the statements, the work of city survey is completed and the record of the city survey in respect of the suit property is in the name of plaintiffs. Thereafter, the map of city survey came to be prepared and suit property was numbered as city survey no. 157.

4. According to plaintiffs, in spite of knowing that they were possessing the suit property, defendants pretended to measure the suit property and the said measurement is carried out behind the back of the plaintiffs. For that purpose, plaintiffs have also filed complaint in the office of land Records. By virtue of alleged measurement, on 1/11/2015 defendants tried to erect cement poles in the suit property. When the plaintiffs asked the defendants about the same, they abused and threatened the plaintiffs. Lastly, it is apprehended by the plaintiffs that if the defendants succeed in their illegal purpose of erecting cement poles in the suit property, the road available to the plaintiffs to approach the property described in para 1A of the plaint would be blocked and thus, plaintiffs would suffer irreparable loss which cannot be compensated in terms of money. Hence, the present application.

5. In pursuance of the notice of the application, defendant nos. 1 to 4 appeared and contested the application vide their say at Exh.27. Defendants in their say have denied all the contentions put

forth by the plaintiffs in the application. According to defendants, the property in land Gat no. 1/B having Survey no. 62/B ad-measuring 0.20R is owned and possessed by them since their ancestors and defendants are having residential houses therein. It is also stated that on 16/6/2015, defendants made application in the office of Land Records for measurement of Survey no. 62/B for the purpose of fixing its boundaries. Accordingly, measurement officer issued notices to plaintiffs, defendants and adjacent land owners and in their presence measurement was carried out. So also, by virtue of said measurement, on 28/10/2015 measurement officer has fixed the boundaries of Survey no. 62/B and thereafter on 31/10/2015 he has issued copy of the map regarding the same in respect of Survey no. 62/B. In order to avoid future disputes and for the purpose of security, defendants have erected cement poles in their property i.e. in Survey no. 62/B.

6. According to defendants, the property of plaintiffs in Survey no. 62/C is situated towards southern side of Survey no. 62/B and plaintiffs have erected wall compound in the same. Therefore, the question of encroachment and interference to the property of the plaintiffs would not arise. Lastly, it is stated that plaintiffs are not at all concerned with the property in Survey no. 62/B and they have shown imaginary road by preparing false documents. Thus, defendants have prayed for rejection of the application with costs.

7. On the basis of rival contentions of the parties, following points arise for my determination and I have recorded my findings on them with the reasons to follow:-

Sr.No.	Points	Findings
1	Whether plaintiffs prove prima facie case in their favour?	In the negative
2	In whose favour balance of convenience lies?	In favour of defendants
3	Whether plaintiffs would suffer irreparable loss if the relief of temporary injunction is refused?	In the negative
4	What order?	As per final order

Reasons

8. In order to substantiate their claim, plaintiffs have filed certified copies of extract of enquiry register of Sr.no. (चालता नंबर) 12 & 48, certified copies of 7/12 extract of land Gat no. 1/C and land Gat no. 1/B, certified copies of extract no. 8 in respect of Gram panchayat property nos. 34 and 778, certified copy of map of city survey nos. 156 to 162, photo copy of sale-deed dt. 6/3/1982, photo copies of measurement notice dt. 25/8/2015 and objection regarding the same dt. 30/10/2015. Plaintiffs have also filed photo copies of their property and extracts of enquiry register pertaining to

Chalata number instead to 10. Plaintiffs have also relied upon the certified copies of maps of city survey nos. 156, 160 and 161 and city surevey no. 157 and 159 along with the notice issued by Special District Supervisor of Land Records dt. 20/9/1991 and affidavits of Balu Daingade and Laxhman Thorat.

Defendants have relied upon certified copies of land Gat no. 1/B, mutation entry no. 1779 and notice dt. 31/10/2015 regarding carrying out the measurement of Survey no. 1/B and issuing copy of map. Defendants have also relied upon the affidavit of one Jaiwant Thorat.

As to point no.1 :-

9. During the course of arguments, learned Advocate for plaintiffs Shri. N.S. Patil has vehemently argued that the suit property is owned and possessed by plaintiffs by virtue of extracts of enquiry registers in the year 1991, their names are recorded in the column of possessors. He has also argued that since long plaintiffs are using the suit property for the purpose of approaching the property described in para 1A of the paint and for keeping firewood and heap of grass and for tyeing cattle. He has further argued that by virtue of alleged measurement of land Gat no. 1B, defendants are trying to erect cement poles in the suit property. According to him, the alleged measurement is carried out behind the back of the plaintiffs. Therefore, the same is not binding on them. Lastly, he has argued that if the defendants succeed in their illegal purpose of

erecting cement poles in the suit property, the road available to the plaintiffs for approaching their house will be blocked and hence, plaintiffs will suffer irreparable loss which cannot be compensated in terms of money.

10. To substantiate his arguments, he has relied upon the judgment of **Darnwl & others V/s. Assistant Engineer & others** reported in **1998(1) Civ LJ 573**, wherein Hon'ble Patana High Court has held that, 'in the title suit, where possession of plaintiffs were recorded in Government record, injunction can be granted on the basis of possession of the plaintiffs.' Reliance is also placed upon the judgment of **Basavraj Patil V/s. Mahesh** reported in **1998(2) Civ LJ 472**, wherein Hon'ble Karnataka High Court has held that, 'where the plaintiff who was in possession of the property under colour of right, even assuming he was in unlawful possession, defendant has no right to dispossess him except in accordance with law; even if he is true owner of suit property.'

11. On the contrary, learned Advocate for defendants Shri. Kavale has submitted that defendants are owners and possessors of land in Gat no. 1B ad-measuring 20R and 7/12 extract of the same is in their name. He has further argued that the defendants had filed the application for measurement of land Gat no. 1B only for the purpose of fixing the boundaries. Thus, the defendants are having title of land Gat no. 1B. According to him,

the property of the plaintiffs i.e. 62/C is situated towards southern side of the and Gat no. 1B. Therefore, plaintiffs are not concerned with land Gat no. 1B. He has also argued that the measurement dt. 15/9/2014 was carried out in presence of plaintiffs, defendants and adjacent owners along with the respective panchas and thereafter the map of the measurement came to be issued. Lastly, he has argued that plaintiffs have no prima facie case no balance convenience lies in their favour. On the other hand, if the temporary injunction application is allowed, it would be defendants who will suffer irreparable loss. Hence, he prayed for rejection of the application with costs.

12. I have given thoughtful consideration to the arguments advanced by learned Advocates for the parties. In so far as title of the property described in para 1A of the plaint is concerned, it is not in dispute and plaintiffs have also filed photo copy of sale-deed along with list Exh.3/1 to substantiate the same. However, in so far as description of the suit property is concerned, prima facie perusal of various copies of maps filed by the plaintiffs in respect of city survey nos. 156 to 162 is concerned; it prima facie reveals that there is absolutely no mention of any road in city survey no. 157. So also, prima facie perusal of maps along with extracts of various inquiry registers filed by the plaintiffs reveals the clear endorsement that the said survey and city survey is not yet implemented. Therefore, at this stage, the said extracts cannot be considered as title of the suit

property as claimed by the plaintiffs.

13. On the other hand, defendants have come up with the specific case that they have made application in the office of Land Records for the purpose of fixing boundaries of land Gat no. 1B having survey no. 62B and the same was carried out in presence of plaintiffs, defendants, adjacent owners and panchas. In that context, prima facie perusal of certified copy of land Gat no. 1B filed by defendants along with list Exh.29/1 reveals the names of defendants and others in the column of possession for an area ad-measuring 20R. Not only that, the notice dt. 25/8/2015 issued by inspector of Land Records to the adjacent land holders for measurement also prima facie reveals that the measurement was about to be carried out in respect of Survey no. 1B situated at Kapil, village Kapil which stands in the name of defendants. Further, it is worth here to note that one of the adjacent owners i.e. son of the plaintiff has vide letter dt. 30/10/2015 himself stated that in pursuance of the notice dt. 28/10/2015 for measurement of land Gat no. 1B, he was present. However, the measurement officer without verifying his documents and under the pressure of defendant no.1 carried out one sided measurement. Thus, it prima facie reveals that son of defendant no.1 was present at the time of measurement. If that being so, the whole dispute is pertaining to the measurement of land Gat no. 1B which stands in the name of defendants. Thus, the appropriate remedy which available to plaintiffs was to approach upper revenue

authorities and to challenge the said measurements. However, plaintiffs have failed to do the same and instead of availing efficacious remedies, they have filed the present suit. So also the facts in the judgments relied upon by plaintiffs are altogether different from the facts of present case. Therefore, ratio laid down therein can not be squarely made applicable to the present case. Thus, considering all these aspects, I am of the considered view that plaintiffs have failed to prove prima facie case in their favour. I therefore record my findings to point no.1 in the negative.

As to points no.2 and 3 :-

14. In view of my findings to point no.1, I am also of the view that balance of convenience lies in favour of defendants. It is for the simple reason that they have carried out measurement of land Gat no. 1B which they are possessing and revenue record of the same is also in their favour. Thus, as the plaintiffs have available efficacious remedies to approach the upper revenue authorities, they would not suffer irreparable loss. On the contrary, defendants have measured land Gat no. 1B and its boundaries were also fixed by concerned measurement officer of Land Records. Thus, it would be defendants who would suffer irreparable loss if the application is allowed. Therefore, considering these aspects, I record my findings to point nos. 2 accordingly and 3 in the negative.

As to point no.4 :-

15. The cumulative effect of my findings to point nos. 1 to 3 is that, the application fails & deserves to be dismissed. Hence, in the result, in answer to point no.4, I pass the following order:-

ORDER

1. Application stands rejected.
2. Costs in cause.

Place : Karad

Date : 14.01.2016

(A.N. Kulkarni)

3rd Jt. Civil Judge, Jr. Dn., Karad