

**MHST080003532022**



**ORDER BLEOW EXH. 5 IN R. C. S. NO. 82 OF 2022.**  
**(Shaukatbhai Shaikh & Ors. Vrs. Santosh Jadhav & Ors. )**  
**(Passed on 21.05.2022)**

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Perused application filed by plaintiffs at Exh. 5 under Order 39, Rule 1 and 2 of Code of Civil Procedure. Perused say filed by defendant no. 1 at Exh. 26.

**02. Suit property :** Land of village Shirwal, Tal. Khandala, District - Satara bearing old survey No. 12/1, 12/2, new gat no. 10 admeasuring 00 H. 41 R. out of that 08 aana share i.e. 00 H. 20.5 R. Southern side land and encroachment of 02 R. land on West side.

Boundary marks are as under :-

Towards East	:	Gat no. 9
Towards South	:	Gat no. 7
Towards West	:	Road encroached by defendant and city survey no. 1114 and 1115.
Towards North	:	Remaining 08 aana land of gat no. 10

(Hereinafter referred as "the Suit Property").

**03.** Heard both sides.

**04.** After considering the rival contentions raised by both the parties following points arises for my determination and my findings with reasons stated thereon are as follows.

<b><u>Sr. No.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether the plaintiffs have made out prima-facie case in their favour ?	<b>No.</b>
2.	Whether the balance of convenience lie in favour of the plaintiffs ?	<b>No.</b>
3.	Whether the plaintiffs will suffer the irreparable loss if interim injunction is not granted in their favour ?	<b>No.</b>
4.	What order ?	<b>As per final order.</b>

**:: REASONS ::**

● **AS TO POINT NO. 1 TO 3 :-**

**05.** The point No. 1 to 3 are interlinked with each other, therefore, in order to avoid repetition, I am taking them jointly for the discussion.

**06.** The learned advocate for plaintiffs submitted that, Bhiva Vithu Ramoshi @ Jadhav was owner of survey no. 12/1 and 12/2. Said survey number converted into gat no. 10. On 07.04.1983, plaintiff no. 1 purchased by way of sale-deed 08 aana share i.e. 02.5 R. land from son of Bhiva, since then plaintiff no. 1 is in possession of the suit property. In the year of 1990 by way of mutation entry no. 726 land is divided in

the name of plaintiff no. 1 and his brothers. 02 aana share each given to them. Plaintiffs were constructed house over the suit property bearing grampanchayat no. 1261. He further submitted that government acquired land for Veer Dam Project and allotted plot to the rehabilitation for people project affected person on East side of the suit property. They prepaid map and allotted plots. The city survey number was given to the said plots. The suit property is agricultural. There was 20 feet road on West side of the suit property. Plot no. 1114 allotted to the predecessor of defendant nos. 2 to 14. Plot no. 1115 allotted to Shankar Kondiba Raut. Shankar Kondiba Raut and holder of city survey no. 1114 encroached over 20 feet road of government. Defendant no. 1 purchased city survey no. 1115 from Shankar Raut. He encroached 40x20 feet area in gat no. 10 and started construction. Defendant nos. 2 to 14 encroached over 60x20 feet area and constructed illegal building.

He further submitted that plaintiffs were insisted for measurement of land but the defendant no. 1 denied it. The defendant no. 1 encroached over government road and 02 R. land of the plaintiffs. He started illegal construction, if defendant no. 1 complete his construction then loss will cause to the plaintiffs. Hence, prayed for allow an application.

**07.** On the contrary, learned advocate for defendant no. 1 submitted that plot in survey no. 264 of village Shirwal was given to the project affected person by government. The city survey no. 1115 admeasuring 275.5 sq. mtr. plot was allotted to the Shankar Raut. Sanad was issued to him. In view of mutation entry no. 185, the said area was confirm by consolidation officer. Defendant no. 1 purchased city survey no. 1115 from son of Shankar by way of registered sale-deed

dated 22.03.2015. Thereafter, name of defendant no. 1 was entered as milkat no. 1152. Shankar Raut was measured his property through T.I.L.R., Khandala on 05.01.1999. Shri. A. R. Tilekar and Dipak Nawale were encroached over the said plot. Defendant no. 1 again measured his land on 16.10.2015. Dipak Nawale encroached over 0.09 sq. mtr. land of defendant no. 1. He handed over said land in favour of defendant no. 1. Thereafter, defendant no. 1 was taken loan from State Bank of India, Shirwal Branch. Search report was given by Learned Advocate Shri. I. D. Khan. Thereafter, bank gave loan to defendant no. 1 for construction of building. After permission from grampanchayat Shirwal, defendant no. 1 started construction. There was no road available on the West side of the suit property. Defendant no. 1 not encroached over the road and land of plaintiffs. Defendant no. 1 constructing house in his property. If injunction is granted irreparable loss will cause to defendant no. 1. Hence, prayed for rejection of application.

**08.** Plaintiffs have filed sale-deed dated 07.04.1983 below Exh. 1. On perusal of same, prima facie it appears that, plaintiff no. 1 purchased suit property from Sonba Bhiva Jadhav. In the boundary mark it has specifically mentioned that towards West side there is road of survey no. 264. Plaintiffs have filed mutation entry no. 496 below Exh. 3/2. After sale-deed said mutation entry was sanctioned. As per mutation entry no. 726 suit property is divided between plaintiff no. 1 and his brothers. Accordingly, entries are taken on 7/12 extract. Plaintiff no. 1 and his brothers get 00 H., 0.5.12 R. land each. Plaintiffs also filed 8-A extract of milkat no. 1261 on record. On perusal of same it appears that, the area is 20.5 R. land and there is tin shed over 61x24 land.

**09.** On perusal of above documents prima facie it appears that plaintiff no. 1 and his brothers are owner of the suit property and they constructed house i.e. milkat no. 1261 over the suit property.

**10.** According to plaintiffs, defendant no. 1 encroached over the suit property and he started construction over it. On 14.07.2014, plaintiff no. 1 has filed an application for measurement of gat no. 10. He also filed one application before T.I.L.R, Khandala on 26.04.2014. The T.I.L.R. replied to the letter of Amir Iqbal Shaikh on 08.04.2022 and stated that the T.I.L.R. can not remove encroachment, hence, avail proper remedy from appropriate authority. The plaintiffs have filed photograph on record. On perusal of same it appears that some construction is going on. The plaintiffs also filed copy of consolidation scheme and according to them, there is correction in the area of city survey no. 1115. He also filed sheet no. 13 on record and according to them, there is road towards West side of the suit property.

**11.** On the contrary, learned advocate for defendant no. 1 has filed property card of city survey no. 1115. On perusal of same, prima facie it appears that, name of original owner Shankar Kondiba Raut appeared on it and in view of mutation entry no. 1083, name of defendant no. 1 is entered on record after he purchased city survey no. 1115 from Shankar Raut. On perusal of property card it also appeared that in view of mutation entry no. 1085, the area of city survey no. 1115 is corrected. The mutation entry no. 1084 shows that defendant no. 1 has mortgaged his property in favour of Karad Merchant Credit Society, Shirwal branch. On perusal of above documents prima facie it appears that, defendant no. 1 has purchased city survey no. 1115 from

Shankar Raut.

**12.** Defendant no. 1 has filed sale-deed (Exh. 28/4) dated 12.03.2015. On perusal of same prima facie it appears that, he has purchased city survey no. 1115 from Shankar Raut. He also filed 8-A extract of milkat no. 1152 on record. On perusal of same it appears that, name of defendant no. 1 and his wife appeared on it. The area is 275.5 sq. mtr. He also filed permission for construction of grampanchayat Shirwal.

**13.** Learned advocate for defendant no. 1 submitted that, learned advocate for plaintiffs Shri. I. D. Khan was taken search report for State Bank of India and after considering all the documents he finally submit his report to State Bank of India and he has given certificate of title. He searched regarding city survey no. 1115 admeasuring 275.5 sq. mtr. situated at village Shirwal, Tal. Khandala and said land is of defendant no. 1 and learned advocate for plaintiffs was given search report and at that time according to his report this defendant no. 1 is owner of city survey no. 1115. In the boundary mark at the West side mentioned as grampanchayat road. The defendant also filed map of city survey no. 1115 measured by T.I.L.R., Khandala on record.

**14.** Prima facie burden lies upon plaintiffs to prove that, defendant no. 1 encroached government road and 02 R. land of plaintiffs. In the boundary mark plaintiffs mentioned towards West side road encroached by defendants and city survey no. 1114 and 1115 and in the para no. 4 of plaint it is mentioned that 20 feet government road is at East side of plots and Shankar Kondiba Raut and holder of city

survey no. 1114 encroached said road. This fact shows that once plaintiffs mentioned that there is road on West side of the suit property and in plaint para no. 4 submitted that there road towards East side of the plot. But, the plaintiffs have not prima facie proved that there is 20 feet road was at West side of the suit property. Even, the road is government road and the government has not taken objection about the encroachment of the defendant no. 1. Even, in the search report it was shown that the grampanchayat road is towards West side of city survey no. 1115. Defendant no. 1 has also filed photographs on record. On perusal of same, it appears that, construction is going on. In that photographd some houses are appeared to the adjacent of new construction and no any road appeared there.

15. Learned advocate for defendant no. 1 to substantiate his argument relied upon “Ambalal Sarabhai Enterprise Ltd. V/s KS. Infraspac LLP Ltd. and Another, Civil Appeal No. 9346/2019, decided on 06.01.2020.” The Hon'ble Apex Court in para no. 23 held that -

*“Wander Ltd. (supra) prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in Gujarat Bottling Co. Ltd. Vs. Coca Cola Co., (1995) 5 SCC 545, observing as follows :*

*Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will apart form other considerations, also look to the conduct of the*

*party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest.”*

In the present matter the plaintiffs have come with theory of encroachment of government road and 02 R. land of them by defendant no. 1. But, prima facie they failed to prove the existence of road on West side of the suit property.

16. Learned advocate for defendant no. 1 further relied upon **“Seema Arshad Zaheer & Ors. V/s. Municipal Corporation of Greater Mumbai & Ors., Special Leave Petition (Civil) 9479/2005, decided on 05.05.2006.”** The Hon'ble Apex Court in para no. 29 held that -

*“The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of*

*plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."*

In the present matter plaintiffs have prima facie failed to prove that there is 20 feet road on the West side of the suit property.

17. On perusal of documents on record, prima facie it appears that, the plaintiffs are owner of the suit property and according to search report of learned advocate Shri. I. D. Khan the defendant no. 1 is owner of the city survey no. 1115. According to plaintiffs, the defendant no. 1 encroached over 20 feet government road and 02 R. land of plaintiffs. But, plaintiffs prima facie failed to prove that there is 20 feet road towards West side of the suit property. The defendant no. 1 has taken loan from State Bank of India. Learned advocate Shri. I. D. Khan taken search of the suit property and issued certificate of title. Accordingly, loan is sanctioned for construction of building. Thereafter, defendant no. 1 applied for permission to grampanchayat Shirwal. Permission was granted. The defendant no. 1 has filed sanction plan of building on record and constructing his house. The plaintiffs prima facie failed to prove that defendant no. 1 encroached over 20 feet road and 02 R. land of them.

18. On perusal of above discussion prima facie it appears that plaintiffs have failed to establish prima facie case. The defendant no. 1 has taken permission and constructing his house. The balance of

convenience lies in favour of defendant no. 1. Plaintiffs constructing their house and work is going on. If injunction is granted irreparable loss will cause to the defendant no. 1. Hence, considering above reason I replied point no. 1 to 3 in the negative and for point no. 4 I proceed to pass following order.

**:: ORDER ::**

1. Application at Exh. 5 is rejected.
2. No order as to cost.

Date: 21.05.2022

( Ajit B. Chavan )  
Civil Judge, Jr. Division, Khandala.