

R.C.S. No. 64/2016,

Girjabai & Ors. Vs. Sitaram & Ors.

Order below Exh. 19.

1] The defendants have filed this application under O. 1 R. 13 of the Code of Civil Procedure. In sum and substance, they have submitted that the plaintiffs have filed this suit for removal of encroachment. However, they are representing a single or individual right as suit land is not their joint property. They have distinct and specified shares in the suit land if any as alleged by them. They have got their right of redress against them if any, but instead of that all of them have chosen to file this one suit jointly. Their cause of action may or can be separate. As such the suit is bad for misjoinder of the plaintiffs. Without prejudice to their said submission they have also submitted that there is no notice of the plaintiffs before filing of this suit as they should/could have sought and/or obtained permission of this Court for filing such type of suit. Hence, in this view of the matter also the suit is not maintainable. With this submission they have prayed to dismiss the suit.

2] The plaintiffs have objected the application by filing their reply at Exh. 21. In sum and substance they have submitted that the defendants have admittedly committed an encroachment over the suit land against the rightful owner. Prior to filing of the suit on dated 18/07/2016 they served jointly or separate registered notice of removal of encroachment on the defendants. However, the defendants did not pay any heed. Hence, they have filed this suit. With this submission they have prayed to reject this application.

3] I have heard learned Advocates for both the parties and perused the plaint and documents on record. On going through the averments in the plaint it appears that it is a case of the plaintiffs that plaintiffs nos. 1 to 5 own and possess 2 Hectar 2 Are land out of Gat No. 490 at Mouje Bhamdevi, Tal. Karanja, Dist. Wahim, and plaintiff no. 6 owned and possessed 3 Hectar 26 Are land out of the said Gat No. 490. However, vide registered partition deed dated 23/02/2007 plaintiff no. 6 partitioned his said land among him and his two sons plaintiffs nos. 7 & 8. This being the position, all the plaintiffs nos. 6 to 8 are jointly cultivating said 3 Hectar 26 Are land. However, the defendants committed encroachment over the 40 Are land of plaintiffs nos. 1 to 5, and 38 Are land of plaintiffs nos. 6 to 8 in the Northern side. It is further their case that they demanded the encroached land to the defendants but they refused to handover its possession. Therefore, plaintiff no. 1 applied to City Survey office to measure the said agricultural land Gat No. 490 on 01/01/2016. Thereafter, on 21/03/2016 the measurer measured the land and fixed the boundaries and he found that the defendants have committed an encroachment over 40 Are land in the Northern side of plaintiffs nos. 1 to 5 and over 38 Are land in the Northern side of plaintiffs nos. 6 to 8.

4] It is settled position of law that for the purpose of deciding maintainability of the suit averments in the plaint are germane and not the defence. On going through the aforesaid case of the plaintiffs, it becomes clear that though as per the plaintiffs, plaintiffs nos. 1 to 5 own different land and plaintiffs nos. 6 to 8 own different land, their claim depends upon the one and same measurement dated 21/03/2016. In this way, it can be said that

they are having same cause of action and they are jointly interested in the same cause of action. Further, if they will file different suits on the basis of same measurement common question of law and fact would arise. Therefore, in view the provisions of O.1 R. 1 and O. 2 R. 3 of the Code of Civil Procedure their suit is maintainable. In this view of the matter, in my considered opinion the plaintiffs have rightly filed this common suit and the suit is neither bad for misjoinder of causes of action nor bad for misjoinder of parties. Hence, I do not find any substance in the contentions of the defendants. Therefore, the application of the defendants is liable to be rejected. In the result, I pass following order.

: ORDER :

The application at Exh. 19 is rejected.

Karanja (Lad) :

Sd/-

Date : 07/09/2018

(A. P. Khanorkar)

2nd Jt. Civil Judge, Junior Division,
Karanja (Lad).