

**ORDER BELOW EXH. 05****Dtd. 06/12/2021**

This is an application under Order 39 Rule 1(c) of CPC filed by plaintiff against the defendants for grant of temporary injunction not to disturb the possession of the plaintiff by the defendants and not to distract boundary on the Northern side of the suit property.

2] Description of the suit property is as follows :-

“agricultural Land bearing old survey no. 103/3, new survey no. 72/3 Area 0H 39R assesment of Rs. 0.40p, on eastern side agricultural land of Vijay Bhandari, westren side Pusad to Umarkhed road, Northern side agricultural land of defendant bearing survey no. 72/3, southern side agricultural land of Sindhu Sarde at village Pusad khand no. 2, Taluka Pusad, District Yawatmal. (hereinafter referred as the 'suit property)”

3] **The brief facts of the plaintiff's case are as under:**

The suit property was owned and possessed by Nagorao Kubade. The said Nagorao is father of defendant no. 1 to 4. On 22/06/1987 suit property was purchased by the plaintiff from Nagorao. As per the said sale deed the named of plaintiff was entered into record of right by mutation entry no. 202 since that day plaintiff is in poseession of the suit property. On 14/02/1987 as per the measurement from the TILR the boundary marks was established and exist today. On 16/05/2016 Sindhubai Sarde and plaintiff measure there land from TILR, Pusad. As per the said

measurement boundary marks of whole survey no. was established and the boundary marks of each of the shareholder of agricultural land was also established. It was also reveals that some land of the survey no. 72/3 was encroach by the owner of survey no. 72/1 & 72/4. no surplus land was found in the possession of plaintiff. On 09/10/2021 at about 1.00 p.m. defendant no. 2 was found that he was destructing the boundary marks on the northern side of the suit property. Defendant no. 2 abused the plaintiff. Plaintiff try to lodged the report but police refused to lodged the report. Hence this application is filed.

4] The defendant no. 1 to 4 objected the application by filing say at Exh. 19. defendant admitted that, on 22/06/1987 sale deed was executed by their father. It is contended that, suit property is not cultivating by the plaintiff. It is denied that, on 14/02/1987 suit land was measured and suit land was given in possession of plaintiff. There is no boundary line fixed between the agricultural land of the plaintiff and the agricultural land of defendants. No obstruction or destruction is made by the defendants. On 05/07/2021 defendants measured whole agricultural land survey no. 72 from the TILR, Pusad. On 01/04/2021 the defendants executed agreement about the agricultural land bearing survey no. 72/3 for Rs. 3 Cr. 30 lacs. To make disturbance for the execution of the said agreement this suit is filed. Hence they prayed to reject the application.

5] Heard Ld. Advocate A.P. Deshmukh for plaintiff and Ld. Advocate V. V. Pande for defendants.

6] Following points arise for my determination. I have given my findings against each of them for the reasons stated below :

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1]	Whether the plaintiffs have prima-facie case in their favour ?	<b>No.</b>
2]	Whether the balance of convenience lies in favour of plaintiffs ?	<b>No.</b>
3]	Whether the plaintiffs would suffer irreparable loss, if injunction is not granted in their favour ?	<b>No.</b>
4]	What Order ?	<b>As per final order.</b>

### **REASONS**

7] The plaintiff in support of their contentions has filed along with List Exh. 3 the following documents :

- 1] Various 7/12 extract of survey no. 72/3, 72/3/A.
- 2] Photocopy of sale deed dated 15/07/1987.
- 3] Map of survey no. 72.
- 4] Photocopy of mutation entry.

8] The defendants in support of their contentions, have relied upon the following documents :

- 1] various 7/12 extract of survey no. 72/1, 72/2, 72/3, 72/4.
- 2] The Map of survey no. 72.
- 3] The affidavit of Dilip Kubde, Santosh Jaiswal, Santosh Kubde, Dipali Jadhav.
- 4] Affidavit no objection for measurement of suit land by the plaintiff.
- 5] Various photograph of suit land.

### **AS TO POINT NO. 1 to 3**

9] All these points are interlinked with each other.

Material adduced by the parties is same on all the points. Heard Learned advocates for both the sides at length. Perused photocopy of 7/12 extract of survey no. 72/3 and survey no. 72/3/A. In the 7/12 extract of survey no. 72/3, the name of defendants are mentioned. In the 7/12 extract of survey no. 72/3/A the name of plaintiff is mentioned. Prima-facie it appears that suit property is in possession of plaintiff. Defendants are in possession of survey no. 27/3 near to suit property. Both the parties are not cultivating the lands. Ld. Advocate for defendants submit that there is no written complaint to the police station. Mere submission that cognizance of the complaint made by the plaintiff is not taken without copy of written complaint can not be accepted. Ld. Advocate for defendants further submit that, no procedure before revenue officer under Maharashtra Land Revenue Code is adopted by the plaintiff for destruction of boundary line . Therefore under such circumstance there is no prima-facie case in favour of plaintiff.

**10]** It is submitted by the plaintiff that on Northern side of the suit property, there is boundary line from east to west. Where as defendants submit that, there is no demarcation of the lands of plaintiff and defendants. On perusal of pleadings, it appears that there is dispute about the boundary line. Therefore under circumstances when the parties are adjoining land owners. If injunction not to disturb the possession of the plaintiff is granted, it would result into granting final relief to the plaintiff.

**11]** plaintiff submit that, there is boundary marks on the northern side at the suit property. Where as defendants denied that there is boundary line on the northern side of suit property. Both

the parties filed maps of TILR, Pusad. So far as map filed by plaintiff is concerned, it is submitted by defendant that the said map is not prepared in the presence of the defendants. Where as map filed by the defendant is prepared in presence of plaintiff. On perusal of said map prima-facie it can not be said that there is boundary marks between the lands of parties. On perusal of photographs and affidavit filed by the defendants, it can not be prima-facie said that there is boundary marks at the northern side of suit property. It is a matter of trial to decide that there was obstruction and destruction of boundary mark by the defendants.

12] So far as balance of convenience is concerned, defendants submit that, they have executed one agreement for the survey no. 72/3 near to the suit property. Ld. Advocate for defendants submit that, if the injunction is allowed then loss will be costs to the defendants. Prima-facie therefore balance of convenience is not infavour of plaintiff. Further on peading of both the parties it appears that both the parties are not cultivating the said lands. Therefore if injunction is rejected then there will not be any lost to the any party. Therefore finding to the point no. 01 to 03 is in negative. In view of negative findings to the aforesaid points, I proceed to pass the following order.

**ORDER**

1] The application is rejected.

2] No order as to costs.

Place: Pusad.

Date: 06/12/2021

**(V. S. Waghmode)**  
6<sup>th</sup> Jt. Civil Judge Jr. Dn.,  
Pusad.