

Presented on : 21.07.2007  
Registration : 21.07.2007  
Decided on : 13.08.2013  
Duration : 06 00 22  
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IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,  
GHATANJI.

( Presided over by Tejwant Singh A. Sandhu )

Reg. Civil Suit No. 29 of 2007

Exh.No.\_\_\_\_\_.

Narayan Krushnaji Dudhe,  
Aged :- 45 years, Occu. Agriculturist,  
R/o. Khapri, , Tal. Ghatanji,  
Dist. Yavatmal

...

The Plaintiff.

.. VERSUS ..

Namdeo Laxmanrao Waghade,  
Aged :- 47 years, Occu :- Agri.,  
R/o. Kondjai, Tal. Ghatanji,  
Distt. Yavatmal.

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The Defendant.

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Mr. V.B. Bhure, Adv. for the Plaintiff.  
Mr. G.I.Dhatrak Adv. for the defendant  
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J U D G M E N T

( Delivered on this 13<sup>th</sup> day of August, 2013 )

This is the suit for recovery of possession of encroached area to the extent of 0.3 R on southern side of the land in City Survey No. 110 having total area admeasuring 1.49 H.R. Having abuttals as under :-

To the East – Ghatanji-Sonkhas-Yavatmal road,

To the West - Land of Shivramji Waghade and  
Shri Waghade,  
To the North - Land of Bhauraoji Winchurkar,  
To the South - Shiv of village Kondjai & thereafter  
field of defendant.

(hereinafter be referred as the Suit Land for the sake of convenience ).

2. It is the case of the plaintiff that he is owner and possessor of the suit land. He has measured his land on dated 22.02.2007. The measurement was carried out after notice to the adjacent land owners. On the day of measurement the defendant was present. In the said measurement it has been noted that an area on southern side to the extent of 0.3 R has been encroached by the owner of Survey No.22 which is on northern side. The said fact was made known to the defendant by the cadestal surveyor and he has admitted the same and was ready to give its possession. The cadestal surveyor has issued 'C' sheet of map to him. As the suit land was in Kondjaee which is included in Ghatanji Taluka while the land of defendant is of Saikheda, which is included in Yavatmal Taluka. Hence the cadestal surveyor has shown the survey number of the defendant's land in the Shiv of land.

3. It is his further case that though the defendant has admitted to give possession of the encroached area to him but has not given it actually. He has given understanding to him through adjacent land owner but he was quarreling with him and was threatening to beat him. Hence he has issued a notice through his Advocate on 31.05.2007 asking the defendant to give the possession of encroached area. A notice was served upon the defendant on 09.06.2007 but he has not acted upon it. Hence this suit for recovery of

possession alongwith past and future mesne profit.

4. The defendant has appeared and filed his written statement below Exh.16 and denied all the material averment of the plaintiff. It is his say that the suit land and his land was in different Taluka it has to be jointly measured. Even from the plaint itself it appears that the plaintiff has encroached the land over the Shiv of both villages namely Kondjaee and Saikheda. Hence measurement taken by the plaintiff is false. He was not present on the day of measurement. Hence he prayed for dismissal of the suit with compensatory costs.

5. The Issues Exh. 17 were framed by my learned Predecessor. They are reproduced below alongwith my findings thereon :-

<u>ISSUES :</u>	<u>FINDINGS :</u>
1. Whether the plaintiff proves the defendant has made encroachment, if yes, to what extent ? ...	No.
2. Whether the plaintiff is entitled to recover encroached area from the defendant ? ...	Does not survive.
3. Whether the plaintiff is entitled to inquiry in to mesne profit ? ...	Does not survive.
4. What order and decree ? ...	The suit is dismissed.

R E A S O N S.

6. To prove the case the plaintiff has examined himself vide his affidavit below Exh.20 and has relied upon the documents from Exh.21 to 28. He has also got examined the cadestral surveyor Mr. Fulmali as PW2 below Exh.41. The measurement map (Exh.No.42) was proved. The plaintiff has also relied upon the map (Exh.32), 7/12 extract (Exh.33), mutation entry (Exh.34), certified copy of sale deed (Exh.35). He has closed his evidence vide pursis (Exh.43).

7. To disprove the case of the plaintiff the defendant has entered into the witness box as per affidavit (Exh.48) and has filed 7/12 extract (Exh.49). He has closed his evidence vide pursis (Exh.53).

8. Heard the learned Adv. Shri Bhure and Shri. Dhattrak for the respective parties.

As to Issue Nos. 1 : -

9. As this is the case based on title and possession first and foremost fact which has to be seen as to whether the plaintiff has proved his ownership over the suit land alongwith possession and he has to prove that 0.3 R area has been encroached by the defendant out of the suit land. First of all I should mention here that the plaintiff has not proved his ownership over the total area of the suit land by proper evidence. Though there is sale deed (Exh.35) but it appears that to be xerox copy which has been verified by the concerned A.S. of this Court. Though it has been exhibited but it has

to be proved as per rules laid down in Indian Evidence Act. As it is a xerox verified copy the plaintiff has to apply to this Court for leading secondary evidence of at least he should have taken care to produce the original copy of sale deed at the time of exhibiting the xerox verified copy. Further the concerned A.S. of this Court will have to be examined as to the fact that he has verified xerox copy of sale deed from the original but this care has not taken by the plaintiff.

10. As per plaint it appears that the plaintiff has claimed himself to be the owner and possessor of an area admeasuring 1.49 H.R. in Sur.No.110. As per his pleading and evidence he has got measured the said land on 22.02.2007. The witness on that fact that is the cadestal surveyor Fulmali has been examined below Exh.41. As per his evidence he measured the suit land on 22.02.2007. He deposed that at the time of measurement he was having the documents given by the plaintiff namely form No.8 (A) , the map of Gut No.7/12 extract, the form No.9(3) and 9 (4) and on that day he found 0.3 R has encroached portion by one person of Kondjai Shiv. On minute perusal of map (Exh.42) there is no mention of the name of the person who has encroached that area.

11. Further as per evidence of cadestal surveyor he has measured the land on 22.02.2007 but one surprising fact is on record is that the 7/12 extract below Exh.21 and below Exh.33 which have been received on 11.05.2007 and 29.07.2011, both these 7/12 extracts shows in the column No.12 that the plaintiff was in possession over the area as mentioned in the plaint i.e. 1.49 H.R. Though the measurement has been taken in the month of February the 7/12 extract (Exh.21) it has been issued the month of May

shows that the plaintiff was possession all the land which he claim by himself. Further 7/12 extract (Exh.33) was issued on 29.07.2011 that is after about 4 and ½ years also shown in column No.12 that the plaintiff was in possession over the land as he claimed. So the fact of the encroachment to the extent of 0.3 R appears to be negatived by the documents filed by the plaintiff only. If the cadestal surveyor was having 7/12 extract at the time of measurement then he might have made a remark over the 7/12 extract (Exh.21) that 0.3 R is not in his possession or at least the plaintiff might have taken care at the time of taking the copy of 7/12 extract (Exh.21 and 33) that 0.3 R has been encroached by the defendant and he might have asked the concerned Talathi who has shown the same to show it in the 7/12 extract. So these fact shows that there is no encroachment at all and the plaintiff appears to be possession of the land as he has pleaded. In view of above said reason the plaintiff has failed to prove the fact of the encroachment at the hands of defendant. Hence I answered Issue No.1 in the negative.

As to Issue Nos. 2 and 3 :

12. In view of my negative finding to Issue No.1 these issues does not survive. Hence I answer Issue No.2 and 3 accordingly.

As to Issue No.4:

13. In view of my negative findings to Issue No.1 the suit fails and will have to be dismissed. Considering the fact of this particular case the plaintiff will have to be ordered to pay costs of the suit to the defendant and

to bear his own. Hence in answer to Issue No.4, I pass the following order :-

O R D E R.

1. The suit is dismissed.
2. The plaintiff shall pay costs of the suit to the defendant and to bear his own.

Dated: 13.08.2013

(Tejwant Singh A.Sandhu)  
Civil Judge (Jr.Dn.) Ghatanji.

**IN THE COURT OF JOINT CIVIL JUDGE, JUNIOR DIVISION,**

**GHATANJI.**

**D E C R E E**

Reg. Civil Suit No. 19 of 2011

Exh.No.\_\_\_\_\_.

Dilip alias Dilya Karsandas Aade,  
Aged :- 24 years, Occu. Labourer,  
R/o. Borgaon,(Dabhdi), Tal. Arni,  
Dist. Yavatmal

... The Plaintiff.

.. VERSUS ..

Karsandas Bhika Aade,  
Aged :- 50 years, Occu :- Agri.,  
R/o. Talni, Tal. Arni,  
Distt. Yavatmal.

... The Defendant.

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Suit filed on 18.04.2011

Suit decided on 23.07.2013

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Mr. N.M.Raut      Adv. for the Plaintiff.  
Mr. V.B. Bhure,    Adv. for the defendant  
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This is the suit for partition and separate possession of the property in Gut No.82 admeasuring 3 Hectar 64 R at village Lingi belonging to the defendant. (hereinafter be referred as the Suit Property for the sake of convenience ).

2.            It is the case of the plaintiff that the defendant is his real father, his mother Babybai was married with defendant in the year 1985 as per customs of their religion. After two years on 19.03.1987 he begotten from said wedlock. The Plaintiff's mother is real daughter of maternal uncle of the defendant. After his birth defendant was having extra marital relations with one Janibai. This fact was came in the knowledge of his mother Babybai. His mother asked the defendant about it and give understanding to him. She also told the fact to her parents and the parents of the defendant. But the defendant does not pay any heed. On the contrary, he used to abuse and beat his mother Babybai. At last the defendant told his mother that she was not of his choice on say of his parents he married with her and wants to live with Janibai only. After that he drove out his mother Babybai and brought said Janibai at his house. At that time said Janibai was pregnant. Since then the plaintiff and his mother were residing at matrimonial house of Babybai at village Borgaon (Dabhdi). As the defendant was the real cousin brother his mother has not reported the case

to the Police.

3. It is his further case that the defendant has illegitimate children from Janibai. As the plaintiff is begotten from legal wedlock and he being legal son was having  $\frac{1}{2}$  share in the suit property and  $\frac{1}{2}$  share of the defendant may be given to his illegitimate children from Janibai. It is his say that he is illiterate and can make signature only. On getting of age of majority he asked his legal share from the defendant orally to which the defendant denied. At that time respective peoples of the village namely Saddroddin Hirani, Sitaram Jadhav, Narayan Ingle, Haribhau Dehankar were present. All the said facts were told to him by his mother Babybai. On 01.04.2011 he issued notice asking the share in the suit property through his advocate to which the defendant has replied falsely and denied his claim. Hence this suit for partition and separate possession to the extent of  $\frac{1}{2}$  share.

4. The said suit is coming before me on 23.07.2013 for final order in presence of Mr. N. M. Raut Advocate for the plaintiffs, Mr. V.B. Bhure Adv. for defendant by passing following order.

O R D E R

1. The suit is dismissed.
2. The parties to bear their own costs.

**Bill of Cost.**

Sr. No.	Particulars	Plaintiff	Defendant
1	Stamp on Plaint		
2	Stamp on Power		
3	Stamp on Process		
4	Stamp on Applin. & docts.		
5	Pleader Fee on Rs.		
6	Total Rs.		

Given under my hand and seal of this Court on 23.07.2013

Prepared by-

Civil Judge (JD),Ghatanji

Counsel for Plaintiff.

Counsel for Defendant.