

Pradip Vs. Narhari**ORDER BELOW EXH.5**

(Passed on 11th day of July, 2014)

1] Plaintiffs has filed the present suit for declaration and perpetual injunction and this application U/o. 39, Rule- 1 and 2 of Code of Civil Procedure.

The facts giving rise to the case are as under ;

2] Plaintiff has alleged to have owned and possessed land G.No.231 admeasuring 1 Hector 13 R. to the extent of southern side 56 ½ R. is owned and possessed by him. It is bounded by the boundaries towards east land of Digambar Prahlad Choudhari, towards west Ambajogai to Beed state highway, to south land of defendant bearing G.No.230 and to north remaining land of his brother in G.No.231. There is east-west bandh existing in between both the lands, there are 30 to 35 years old two babul trees on it. Defendant has got his land measured on 08.03.2013 without knowing him. It is falsely shown in the measurement that of his encroaching 10 R.portion of land G.No.230 which is shown in blue colour in the map. On 08.05.2013 defendant approached him and asked to restore his 10 R. portion which is revealed as encroachment in measurement on 08.03.2013. He also threatened dire consequences on denying the same and further that of his carving out the bandh by ploughing. Since there is existing east-west bandh, so there is no question of encroaching defendants land and if he is not restrained from interfering his lawful possession, then there would be irreparable loss to him. Balance of convenience is lying in his favour. On granting temporary injunction there would be no any loss to defendant.

3] Defendant has resisted this application by filing his say as per Exh.23.

He has denied all the adverse allegations against him. He has denied the ownership and possession of plaintiff on land G.No.231 to the extent of 1 Hecter 13 by him and his brother. Even though, it is noted on 7/12 extracts. It is specifically contended that, in fact most of the portion of land G.No.231 is acquired in Ambajogai Beed road to the knowledge of plaintiff himself. Even then, he is alleging his trying to encroach his portion since last three years by carving out east-west bandh. Then defendant got his land G.No.230 measured from Dy. Inspector, Land Record, Ambajogai on 08.03.2012, by issuing notices to adjacent land holders and it is revealed that, plaintiff himself encroached over 10 R. portion of his land G.No.230 on that count he has filed counter claim. Panchanama is drawn up to that effect, it bears signature of his brother Shivaji Saware. The adjacent land owners from northern side of land G.No.231 by name Hanumant Choudhari, Dashrath Vithalrao Saware, Pramod Vitthalrao Saware, Digambar Prahladrao Choudhari were present at that time. The plaintiff has not got his land measured. So this application is sought to be rejected.

4. On perusing the pleading of the parties and documents on record following points arise for my determination, I have recorded my findings against them for the reasons stated as follows ;

POINTS

FINDINGS

01. Does plaintiff prove prima facie case in his : ...In the negative.
favour ?
02. In whose favour the point of balance of : ..In favour of defendant.
convenience lies ?
03. To whom irreparable loss would be caused : ...Not survived.
by grant of injunction than that of its
refusal ?

04. What order ?

: As per final order order.

REASONS

AS TO POINT NOS. 1 TO 4:

5] It is admitted position that, situation of land G.No.231 and 230 and existing east-west in between them is not in dispute. Plaintiff has alleged interference to his possession by defendant. The fact is that, defendants land is situated the southern side, and that of plaintiffs brother from the said gat number to the northern side. Defendant has got his land measured on 08.03.2012. He has disputed the possession of plaintiff and his brother of land G.No.231 to the extent of 1 Hectar 13 R. for the fact of its acquiring major portion for Beed-Ambajogai road. When there is allegation of encroachment and that too by defendant against the plaintiff himself, then evidence of Dy. Inspector, Land Record, is necessary in the trial. On perusing map dated 08.03.2012, there is encroachment shown by the plaintiff himself on the land of defendant. Defendant has come with a specific case that of acquiring major portion of G.No.231 of Beed Ambajogai road to the western side. Unless and until this fact is clarified, the plaintiff and his brother cannot be said to have owned and possessed a portion admeasuring 1 Hectar 13 R.in land G.No.231. Moreover, it is also to be ascertained by measurement by Dy.T.I.L.R. that, as to whether plaintiff and his brother have owned and possessed 1 hectar and 31 R. in and out of land G.No.231, but there is no bandh shown in the map in between these lands which is alleged to have situated in east-west direction and that of there standing two babul trees which are more than 35 years old. The map by defendant is required to be scrutinized only by oral evidence within the meaning of section 83 of Indian Evidence Act. The plaintiff has instituted suit for declaration and perpetual injunction and by disposal of this application would amount to disposal of main suit. Hence proper order at this stage would be to direct the parties to maintain status-quo. So I find no prima-

facie case with the plaintiff for the fact of measurement of land G.No.230 by defendant recently i.e. on 08.03.2012. it seems that, there is balance of convenience lying in favour of defendant. As I have already clarified that, the area alleged to have possessed by the parties for the ownership shown in their respective 7/12 extracts is required to be considered in the trial itself and by taking into consideration the most important fact, as to whether any portion of land G.No.231 is acquired for Beed-Ambajogai road. Hence question of irreparable loss to any of the parties, does not survive here. With these observations, I reply point No.1 in the negative, no.2 in favour of defendant No.3 as not survived. Hence following order.

ORDER

- (1) Parties are directed to maintain status-quo till the disposal of suit.
- (2) Costs in cause.
- (3) Pronounced in Open Court.

SD/-

Place : Ambajogai.

(S.V. Bhutke)

Date : 11/07/2014.

Jt.Civil Judge (Jr.Divn.),

Ambajogai.