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IN THE COURT OF 2nd JT. CIVIL JUDGE J.D., RAIGAD-ALIBAG

(Presided over by Smt. A. V. Mohite)

Reg. Civ. Suit No.75/2011

Exh. No. 83/A

CNR No.MHRG020005002011

Smt. Vimal Gopal Patil

Age 74 yrs., Occ. - Agriculture

R/o. Bhute, Tal. Alibag, Dist. Raigad



Plaintiff

V/s.

Shri. Sadanand Balu Mhatre

Age 79 yrs., Occ. - Agriculture

R/o. Man through Zirad,

Tal. Alibag, Dist. Raigad



Defendant

Suit for removal of encroachment.

Appearances :-

Advocate for plaintiff - Smt. Seema Gharat

Advocate for defendant - Shri. P.M.Thakur

JUDGMENT

(Delivered on 30/04/2024)

The present suit is for relief of removal of encroachment.

The Description of suit property :

Sr. No.	Survey No.	Area	Village
1	48	0.02.0 p.k. 0.01.5 ----- 0.03.5	Man through Zirad, Tal. Alibag

The property mentioned in para No.1 of the plaint is hereinafter referred as 'the suit property' for sake of brevity.

Plaintiff's case in brief is as follows,

2. The Plaintiff alleged that she is the owner of the suit property. The property originally belonged to her father, viz. Late Gopal Arjun Patil. After his demise, the suit property was owned by her mother, Bhagirathi Gopal Patil. Bhagirathi passed away on 08/10/1991. After the demise of

Bhagirathi, the name of the plaintiff recorded via mutation entry No. 1759. The defendant has encroached upon the southern side of the suit property, approximately an area of 0.5 guntha. The defendant has constructed some part of a cattle shed on the suit property. He has also planted three coconut plants, one mango tree, and two guava trees.

3. The plaintiff had filed a complaint to Collector Raigad to resolve the dispute amicably. As per the letter dated 1/4/2010 from the Collector, the plaintiff filed an application to the Taluka Inspector of Land Records (TILR), Alibag for the measurement of the suit property. Accordingly, TILR measured the land and prepared a map. The defendant was also present at that time. However, the defendant was not ready to remove the said encroachment. Therefore, the plaintiff approached the Collector again. The Tahsildar Alibag enquired into the matter and visited the spot. He filed a report stating that the defendant has encroached upon the suit property, measuring an area of 0.5 guntha. On 24/09/2010, the Collector informed that the plaintiff shall seek remedy in the Civil Court.

4. Thereafter, the plaintiff sent a notice on 9/3/2011 to the defendant for the removal of the said encroachment. However, the defendant gave a false reply to the notice and did not act as per the notice. Therefore, the present suit is filed. The plaintiff prayed that possession of the encroached land be given to her by removing the construction and trees planted by the defendant.

Defence of defendant is as follows :

5. The Defendant appeared in the matter and filed a written statement at Exh. 14, denying the suit in toto. The defendant contended that the suit property belongs to villagers (gavaki), and the plaintiff has no concern with the suit property. The defendant contended that he is owner of the house and adjacent area of the suit property for 35 years. The defendant has cattle shed, 5-6 coconut trees, 2 guava trees, 1 mango tree, and 3 drumstick trees besides the house property.

6. The defendant denied ownership of the plaintiff of the suit property. He contended that the defendant is not residing in the house situated on the suit property. The nephew of the plaintiff, viz., Shashikant Ramchandra Mhatre, is residing in the said house. The road passes through the suit property, and villagers have been using it for the last 50 years. The road passes adjacent to the defendant's property. The defendant has not encroached upon 0.5 guntha of land. The said land belongs to the defendant. The plaintiff or Shashikant Mhatre has no concern with the said land. This fact was noticed by members of the dispute-resolving committee. The suit is false. Hence, it should be rejected.

7. My Ld. Predecessor framed issues at Exh.16. These issues are reproduced below by translating it in English. I have recorded my findings and reasons thereon as follows:

Sr. No.	Issues	Findings
1.	Does plaintiff prove that she is owner of the suit property?	Yes
2.	Does plaintiff prove that the defendant has ..	Encroachment

- encroached over 0.5 guntha land from southern side of the suit property? proved over 8.50 sq.mtr land only.
3. Is plaintiff entitled for relief of possession of encroached area? .. Yes
4. What order and decree? .. As per final order.

REASONS

8. In order to prove contentions raised in the plaint, the plaintiff has examined following witnesses :

1.	Vimal Gopal Patil (Plaintiff)	(PW 1)	Exh.33
2.	Dashrath Dagadu Mhatre	(PW 2)	Exh.52
3.	Sunil Tukaram Sangare - Surveyor	(PW 3)	Exh.59

9. The Plaintiff relied upon following documentary evidence.

1.	7/12 extract of survey No.48/22 of village Man through Zirad of the Year 2010	Exh.34
2.	Mutation entry No.1759, 998, 835, 659 and 1389 of village Man through Zirad	Exh.35 to 39
3.	Map of suit property	Exh.40
4.	Notice Dt.09/03/2011 send by plaintiff through advocate to defendant and reply notice Dt.18/03/2011	Exh.41

5.	Reply Dt.22/10/2010 send by Group Grampanchayat Zirad to plaintiff.	Exh.42
6.	Copy of Tokan No.14/3372/2010 and token No.22/3387/2010	Exh.43 and Exh.44
7.	Letter Dt.17/08/2010 issued by Circle Officer Kihim to plaintiff.	Exh.45
8.	Map of suit property	Exh.60

10. The Plaintiff has closed her evidence vide evidence close pursis at Exh.61.

11. The Defendant has examined following witnesses :

1.	Sadanand Balu Mhatre (Defendant)	(DW 1)	Exh.68
2.	Dattaram Gauru Mhatre	(DW 2)	Exh.74

12. The Defendant relied upon following documentary evidence.

1.	Extract of Assessment of house No.117 of Village Bamnoli of the year 2015-2016 to 2018-2019	Exh.70
2.	Tax receipt of house No.117 of Village Bamnoli	Exh.71

13. The evidence of defendant is closed vide passing order below Exh.1

Arguments :

14. The Learned Advocate for the plaintiff argued that the plaintiff has proved the case. She is the owner of the suit property. According to the evidence of the measurement officer, she has proved the encroachment over the suit property. Hence, the suit should be decreed. The plaintiff has filed written arguments at Exh.80. I have gone through the same.

15. On the other hand, the learned advocate for the defendant argued that the plaintiff has no concern with the suit property. She is not residing in the suit property. The defendant is the owner of the suit property. Therefore, the suit should be dismissed.

As to Issue No.1 :

16. The plaintiff, Vimal Gopal Patil (PW 1), deposed by filing an affidavit in lieu of examination-in-chief at Exh. 33 and reiterated the contents of the plaint. She relied upon documentary evidence to prove her ownership. She has filed on record revenue documents, i.e., 7/12 extract of the suit property (Exh.34), M.E. No.1759 (Exh.35), M.E. No.998 (Exh.36), M.E. No.835 (Exh.37), M.E. No.659 (Exh.38), and M.E. No.1389 (Exh.39). Upon perusal of these documents, it appears that since 24/10/1939, the land is recorded in the name of Gopal Arvind Patil, vide M.E. No.835 (Exh.37). As per M.E. No.998, after the demise of Gopal Patil, the name of Bhagirathi Gopal Patil is recorded since 25/12/1948. As per M.E. No.1759, Bhagirathi Gopal Patil passed away on 8/10/1991, and the land is recorded in the name of the plaintiff. Therefore, ownership of the plaintiff is established by these documents. Though the defendant has denied the ownership of the plaintiff, he has not produced any evidence to

disprove this fact. However, the plaintiff has proved that she is the owner of the suit property. Hence, I answer Issue no. 1 as 'Yes'.

As to Issue No. 2 :

17. The plaintiff alleged that the defendant has encroached upon approximately 0.5 guntha of land from the southern side of the suit property. To prove this fact, the plaintiff examined Sunil Tukaram Sangare (PW 3), surveyor from the Land Records Department. He testified that he measured the suit property. The defendant was present at that time. He prepared a map (Exh.60) based on the boundaries shown by both the plaintiff and defendant. The encroached area was marked in green color, totaling 8.50 square meters.

18. During cross-examination, Sangare (PW 3) admitted that within the alleged encroached area, there are one mango tree and one coconut tree, both fully grown and bearing fruit. He further admitted that the plaintiff has encroached upon other land. Additionally, he acknowledged that some part of the house is constructed in survey No. 48/1.

19. The plaintiff examined Dashrath Dagadu Mhatre (PW 2). He testified that the plaintiff is the owner of survey No. 48/22, measuring an area of 3.5 guntha. The plaintiff's house is situated on the said property. The defendant has constructed a cattle shed and a house near the plaintiff's house and encroached by planting trees on the suit property.

20. During cross-examination he admitted that the trees are about 10 years old and these trees are fruit berars. He admitted that the

plaintiff has not taken objection while planting trees.

21. The defendant, Sadanand Balu Mhatre (DW1), deposed via affidavit in lieu of examination-in-chief at Exh.66. He reiterated the same version as in his written statement. During cross-examination, he admitted that he could not state how much land was allotted to him by Gavaki. He had not measured the plot allotted to him by Gavaki. Furthermore, he admitted that he could not state how much land is in his possession, as he had not surveyed the land.

22. Dattaram (DW 2) testified that he served as a panch of village Bhute from 1970 to 1975. He is a neighbor of the defendant. Gavaki allotted plots to needy people, and the defendant received a plot measuring 25 X 25 approximately 40 to 45 years ago. The defendant constructed a house, cattle shed, and planted trees on the said property. The dispute resolution committee rejected the plaintiff's application, concluding that the defendant did not encroach upon the suit property.

23. During cross-examination, he stated that the survey number was measured prior to the creation of its plots. The measurement was conducted using the plain table method and was allotted to the defendant, with dimensions of 25 hands in length and width.

24. In this case, the evidence of surveyor Sangare (PW3) is crucial. He measured the land. However, according to the 'B' sheet (Exh.60) of the map, it appears that some land of survey No. 48/22 is under the road, and the defendant has encroached upon 8.50 square

meters of land from the southern side. Therefore, there is no reason to disbelieve his version."

25. Though the defendant has claimed that he is the owner of the alleged encroached area, he has not proven the same. His pleading indirectly indicates that he became the owner of the said area through adverse possession. However, it has come to light through the evidence of surveyor Sangare (PW 3) that there is one mango tree and one coconut tree planted

26. The defendant has not specifically pleaded the survey number of his property. He claimed that the house, cattle shed, and trees have been there for 40 years. However, he has not provided evidence that these trees were indeed planted 40 years ago. He is unable to state how much land was allotted to him by Gavaki.

27. On the contrary, during cross-examination of the plaintiff, it was suggested that whether the plaintiff had raised objections about the planted trees prior to 10 years. During cross-examination, Dashrath (PW 2) responded that the trees are approximately 10 years old. Dashrath (PW2) admitted that the plaintiff did not raise objections when these trees were planted.

28. From these suggestions given to the plaintiff and her witnesses, it appears that the trees were 10 years old . Plaintiff (PW1) and Dashrath (PW2) deposed in the year 2015 in court. So, it can be inferred that the trees were planted in the year 2005.

29. To prove the claim of adverse possession, it is necessary to show that the party must be in possession of the suit land continuously for a period of 12 years. This possession must be with the intention to oust the real owner and must be hostile. The present suit was filed in the year 2011. Therefore, it appears that the period of 12 years is not completed until the date of filing the suit. Therefore, the theory of adverse possession of the defendant fails.

30. The plaintiff alleged that the defendant has constructed cattle shed, 3 coconut trees, 1 mango tree and 2 guava trees. However, as per the evidence of Surveyor (PW3) it is proved that only 1 Mango tree and 1 coconut trees are planted in encroached area. The encroachment is over 8.50 sq. mtr only.

31. Therefore, in view of above discussion, I am of the opinion that the plaintiff has proved that the defendant has encroached over 8.50 sq.mtr. land from southern side of the suit property. Hence I answer issue no. 2 as “ Yes, encroachment proved over 8.50 sq. mtr land only.”

As to Issue No. 3 :

32. In view of answer of Issue no.2, the plaintiff has proved that the defendant has encroached over 8.50 sq.mtr. land from southern side of the suit property by planting one mango tree and one coconut tree. Hence she is entitled for its possession by removing those trees. Hence I answer Issue no. 3 as “ Yes”.

As to Issue No.4 :

33. In view of answers to above issues the plaintiff proved that she is the owner of the suit property. However she failed to prove that the defendant has encroached over 0.5 guntha land but the plaintiff proved that the defendant has encroached over 8.50 sq. mtr land from southern side of the suit property. The costs shall follow event. Hence, I proceed to pass following order.

ORDER

1. The suit is partly decreed with costs.
2. The defendant shall remove one mango tree and one coconut tree from the suit property which are planted in 8.50 sq.mtr. land of the southern side of the suit property within one month from the date of this order. If he failed to remove trees, then the plaintiff is entitled to remove trees and get vacate the encroached land of 8.50 sq. mtr from southern side of the suit property as mentioned in the Map (Exh. 60) through Court at the expenses of the defendant.
3. Decree be drawn up accordingly.
4. The Map (Exh. 60) be treated as part and parcel of the decree.

Alibag
Date – 30/ 04/2024

(A.V. Mohite)
2nd Jt. Civil Judge Junior Division,
Raigad - Alibag