

MHSN070005432007



Received on : 11-09-2007.
Registered on : 12-09-2007.
Decided on : 16-08-2018.
Duration : Ys. Ms. Ds.
10 11 05

IN THE COURT OF JT. CIVIL JUDGE, JUNIOR DIVISION,
AT KAVATHE-MAHANKAL DIST.SANGLI.
(Presided over by Manoj C. Nepte)

REGULAR CIVIL SUIT
NO.71/2007
EXH.NO.104

PLAINTIFF. : Uttam Bapu Sorte,
Age-48 Yrs., Occu. Agri. & Service,
Resident of Kundlapur,
Tal. Kavathe-mahankal, Dist. Sangli.

VERSUS

DEFENDANTS. : 1. SUZLON Energy Ltd., Pune,
Represented through-
Suhas Sudhir Shahane,
Age-50 Yrs., Occu. Service,
Sangli Suzlon Infrastructure Ltd.,
Suraj Bunglow, Flat No.19,
Vijaynagar East, Sanlgi.

2. Shamrao Ganpati Sorte,
Age-51 Yrs., Occu. Agri.,

3. Bhimrao Ganpati Sorte,
Age-49 Yrs., Occu. Agri.,

4. Mukinda Ganpati Sorte,
Age-40 Yrs., Occu. Agri.,
5. Vinayak Bhagappa Sorte,
Age-45 Yrs., Occu. Agri.,
Resident of Gavhan,
Tal.Tasgaon, Dist.Sangli.
6. Tatoba Babu Sorte,
Age-42 Yrs., Occu. Agri.,
7. Pandit Babu Sorte,
Age-48 Yrs., Occu. Agri.,
8. Kashinath Babu Sorte,
Age-50 Yrs., Occu. Agri.,
9. Shivaji Govind Sorte,
Age-41 Yrs., Occu. Agri.,
10. **Keshav Govind Sorte,
died..represented through Lrs.**
- 10/1. Shakuntala Keshav Sorse,
Age-55 Yrs., Occu. Household,
- 10/2. Amar Keshav Sorte,
Age-37 Yrs., Occu. Service,

Both resident of Siddharth Colony,
Chandu Shinde Plot No.64,
Room No.8, Chembur,
Mumbai 400 071
11. Sidram Govind Sorte,
Age-51 Yrs., Occu. Agri.,

12. Gautam Bapu Sorte,
Age-40 Yrs., Occu. Agri.,

Defendant No. 2 to 4, 6 to 9,
11 and 12 are resident of Kundlapur,
Tal.Kavathe-Mahankal, Dist.Sangli.

Learned Advocate Shri H.A.Pawar : For plaintiff.
Learned Advocate Shri A.R.Kshirsagar : For defendant No.1.
Learned Advocate Shri S.S.Nimbalkar : For defendant No.4, 6, 7.
Learned Advocate Shri A.D. Bhosale : For defendant No.9, 11.
Learned Advocate Shri R.M.Patil : For defendant No.5
Learned Advocate Shri V.S.Kadam : For defendant No.12
Suit against defendant No.2 and 8 abated.
Exparte against the defendant No. 3 & Lr's of deft.No.10
Without written statement against defendant No. 4, 6, 7, 9, 11

J U D G M E N T

(Delivered on :-00-08-2018)

The suit is for perpetual injunction and mandatory injunction in respect of land gat no. 167 ad-measuring 05.Hectare-76-R, situated at village Kundlapur, Tal. Kavathe-Mahankal, Dist. Sangli having four boundaries as under :-

towards east : Land Gat No. 168,
 towards west : Dongarsoni road,
 towards south : Land Gat No. 169, 134, 166
 towards north : Tisangi-Kavathe-Mahankal road.

(Here-in-after referred to as "the suit property").

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

2- The plaintiff and defendant No. 2 to 12 have received suit property from their ancestors as "Government Inam Land". The plaintiff and defendant No. 2 to 12 are using the suit property for their residential purpose. There is no partition between themselves by metes and bounds. The plaintiff and his brother i.e. defendant No. 12 are residing away from village Kundlapur for their service. The defendant No. 1 is private limited company. The plaintiff came to know that defendant No.1 has made oral agreement with defendant No.2 to 11 for laying iron poles for electric supply of wind mill from the suit property. The plaintiff and defendant No.12 have not given consent to alleged said work of defendant No.1. The defendant No. 1 has collected material for the said work. The plaintiff intended to take bore-well in the suit property. Now, the defendant No. 1 is trying to lay poles at the spot of proposed bore-well of the plaintiff. On 29.08.2007, the plaintiff requested defendant No. 1 not to carry out the alleged work in the suit property. At that time, the defendant No. 1 has refused his request. Therefore, he has constrained to file present suit for perpetual injunction. During pendency of the suit defendant No. 1 has completed his alleged said work. Therefore, the plaintiff has constrained to amend his plaint and prayed for mandatory injunction against the defendant No. 1.

3- The defendant No. 12 has appeared and filed consenting written statement at Exh. 33. He has admitted the suit claim as it is. Lastly, prayed that the suit be decreed.

4- The defendant no. 1 has appeared and resisted the suit claim by filing his written statement at Exh. 17 and amended written statement at Exh. 89. It is the contention of defendant No.1 that Government of Maharashtra is real owner of the suit property. The plaintiff has no right to claim injunction over entire gat No.167 when he is not exclusive owner of the suit property. The defendant No. 2 to 11 are co-sharer of the suit property, they have given consent to the defendant no. 1 for laying of electric poles in the suit property. The plaintiff is seeking relief of injunction against defendant No. 1 without asking substantial relief of partition. The plaintiff has not filed suit with clean hands. There is no cause of action to file present suit. Lastly, prayed for dismissal of suit.

5- The defendant No. 5 has appeared and filed his written statement at Exh. 57. He has specifically denied the suit claim in to-to. There is no cause of action to file present suit. The defendant No. 5 has admitted that defendant No. 1 has erected electric poles in the suit property but, he does not want to claim any relief against defendant No. 1. Lastly, prayed that suit be dismissed with costs.

6- The defendant No. 2 and 8 are reported died vide Exh. 41. But, the plaintiff has failed to take steps to bring their legal representatives on record with in time. Application filed by the plaintiff at Exh. 59 is rejected. Hence, the suit is abated against defendant No.2 and 8.

7- The defendant No. 3 vide Exh.22 and legal representatives of defendant No. 10 vide Exh.73 are duly served with suit summons. But, they have failed to appear before the Court. Hence, suit is proceeded ex-parte against defendant No. 3 and legal representatives of defendant No. 10.

8- The defendant No. 4, 6, 7, 9 and 11 have appeared by filing their Vakilpatra (Exh.26 & 52). But, they have failed to file their written statement within stipulated period. Hence, the suit is proceeded without written statement against them.

9- In support of his suit, the plaintiff has examined himself as (PW.1 at Exh.79). He has also relied upon 7x12 extract of the suit property (Exh. 8), certificate of Sarpanch dated 10.07.2018, four photographs of suit property filed along with list (Exh.95) and Court Commission report (Exh.98). Thereafter, the plaintiff has closed his evidence by passing pursis at (Exh. 99).

10- On the contrary, the defendant no.1 has examined it's authorized person viz. Dhanaji Bhagwan Patil as (DW.1 Exh.100).

He has filed certified copy of authority letter (Exh.101) and closed his evidence by passing pursis (Exh.102).

11- The defendant No. 3 to 7 and 9 to 12 have not adduced any oral as well as documentary evidence.

12- Heard learned advocate Shri H.A.Pawar for the plaintiff and learned advocate Shri A.R. Kshirsagar for defendant No.1 at length.

13- Considering the rival pleadings of both parties, I have framed issues at Exh. 77. Those issues are reproduced herein under along with findings with reasons to follow.

<u>ISSUES</u>	<u>FINDINGS</u>
1 Does plaintiff prove that he is owner and possessor of the suit property as described in plaint para-1 ?	In the negative.
2 Does plaintiff prove that defendants have caused obstruction to his peaceful possession as alleged ?	In the negative.
3 Whether plaintiff is entitled for perpetual injunction as claimed ?	In the negative.
3A Whether plaintiff is entitled for mandatory injunction as claimed ?	In the negative.
4 What order and decree ?	As per final order.

R E A S O N S.

AS TO ISSUE NO. 1.

14- Uttam (PW.1) has specifically stated that he and defendant No.2 to 12 have received suit property from their ancestors as “ Government Inam Land ”. He and defendant No.2 to 12 are using the suit property for their residential purpose. There is no partition between himself and defendant No. 2 to 12 by metes and bounds. They are in common possession of the suit property. He is residing away from village Kundlapur for his service. In cross examination he has admitted that suit property is “Government Land”. He has no other document except 7x12 extract to show that he is in possession of particular portion of the suit property.

15- On perusal of 7x12 extract (Exh.8), it shows the name of “Government” in ownership column and the names of plaintiff and defendant No. 2 to 12 below the name of “Government”. The name of plaintiff and defendant No.12 appeared on 7x12 extract. But no specific area is shown in front of their names. Whereas, area of 16-R each in front of Shamrao, Bhimrao and Mukinda i.e. defendant No. 2 to 4 is shown. From the 7/12 extract of the suit property is clearly shows that the plaintiff is not sole owner of the suit property. The defendant no. 2 to 12 are having their share in the suit property. The exact area is not shown in front of the name of the plaintiff and defendant no. 12. In such situation, the plaintiff has failed to prove that he is owner and possessor of the

entire suit property as alleged. Hence, I answer the issue no. 1 in the negative.

AS TO ISSUE NO. 2.

16- Uttam (PW.1) has stated that the defendant No.1 is trying to lay poles for electric supply from the suit property. The defendant No.2 to 11 have given oral consent to defendant No.1. He and defendant No.12 have not given any consent to defendant No.1 for alleged work. The defendant No. 1 is trying to lay poles at place where he is intended to take bore-well. On 29.08.2007, he has requested defendant No.1 not to lay poles in the suit property at that time, defendant No. 1 has refused his request and threatened to complete his work. In cross examination he has admitted that defendant No. 1 has constructed wind mill in the vicinity of village Kundlapur, Tisangi and Shelkewadi in the year 2003. He has also admitted that defendant No. 1 has laid poles for electric supply at place to place. He has admitted that since 2003 electric supply was passing on. He has admitted defendant No. 1 has laid poles near road passing through the suit property. He has also admitted that there is no damage caused to human being till today. But he has voluntarily stated that it will cause danger in the future. He has no complaint against defendant No.2 to 11. He has made complaint against defendant No.1 on 29.08.2007. But, no cognizance was taken on his complaint. He is ready to file copy of said complaint. Thereafter, he has denied all suggestions put forth by the defendant no. 1.

17- On the contrary, Dhanaji (DW.1) has stated as per his written statement. He has specifically stated that defendant No.2 to 11 have given oral consent to defendant No.1 for laying electric poles in the suit property. He has admitted that name of defendant No. 1 does not appear on 7x12 extract of the suit property. The defendant No.1 is stranger and having no concerned with the suit property. The defendant No. 1 has laid six poles in the suit property but, he has denied that they have laid said poles without consent of possessor of the suit property. He has not given any notice or proclamation before starting said work. He has admitted that there are four to five houses in the suit property. Thereafter, he has denied all suggestions put forth by the plaintiff.

18- The plaintiff has produced certificate of Sarpanch, Kundlapur dated 10.07.2018. On perusal of said certificate, it shows that land gat no. 167 is agricultural land and having houses of various persons. The said certificate shows the name of plaintiff and defendant No. 1 but, open space is shown in front of their names. The plaintiff has also relied upon four photographs and Commission report (Exh.98). On perusal of commission report (Exh. 98), it shows that there were six poles laid in the suit property. The said poles are at about 35 to 50 ft. away from the Jakhapur-Kavathe-Mahankal tar road in the suit property. The said poles are 35 ft. in height. Electric wires are installed to said poles. One MSEB line is passing under the said poles. He has also

produced rough sketch map along with his report (Exh.98).

19- On perusal of their rival evidence, it appears that both are stating against each other. It is not in dispute that the defendant no. 1 has laid six electric poles in the suit property. This fact clearly seen from the court commission report (Exh. 98) and admissions given by Dhanaji (DW.1). The defendant no. 1 has come with the case that the defendant no. 2 to 11 have given consent to the said work. It is not in dispute that the plaintiff and defendant no. 12 have not given consent to the said work. The defendant no. 2 to 11 have not taken any objection against the alleged work of the defendant no. 1. The defendant no. 5 has admitted in written statement (Exh. 57) that the defendant no. 1 has laid poles in suit property but he is not intended to claim any relief against him. In such situation, the contention of the plaintiff that the defendant no. 1 has carried out alleged work without consent defendant no. 2 to 11 does not survive.

20- So far as the consent of the plaintiff and defendant no. 12 and alleged obstruction at the hands of defendant no. 1 is concern. The plaintiff has not adduced any evidence to show that he is in possession of such and such area of the suit property. He has also failed to show that at which place he is or was intended to take bore-well in the suit property. Uttam (PW.1) has stated that he has lodged complaint against the defendant no. 1 and he is ready to file copy of the said complaint. But, he has failed to

produce copy of the alleged complaint. On the contrary, the evidence on record shows that the defendant no. 1 has completed his work of laying poles in year 2003. In view of answer to the issue no. 1, the plaintiff has failed to prove that he is owner and possessor of suit property. In such situation, the question of causing obstruction to the possession of the plaintiff on 29.08.2007 does not arise. Hence, the plaintiff has failed to prove obstruction at the hands of defendant no. 1. Therefore, I answer the issue no. 2 in the negative.

AS TO ISSUE NO. 3 AND 3A :-

21- The plaintiff has claimed perpetual and mandatory injunction against the defendant no. 1. Uttam (PW.1) has further admitted that his complaint is that defendant No. 2 to 11 have obtained money from defendant No.1. He has also admitted that if defendant No. 1 has paid money to him then he has no grievance against defendant No. 1. He has filed present suit to get money from defendant No.1. This admission clearly shows that the plaintiff has not filed present suit with clean hands. In view of answer to issue no. 1 and 2, the plaintiff has failed to prove that he is owner and possessor of the suit property and the defendant no. 1 has caused obstruction to his possession as alleged. Hence, the plaintiff is not entitled for relief of injunction as claimed. Therefore, I answer the issue no. 3 and 3A in the negative.

AS TO ISSUE NO.4.

22- In view of negative findings to issue no.1 to 3 and 3A, the plaintiff has failed to prove his case. Therefore, the suit is required to be dismissed with costs. Accordingly, I pass following order in the answer of issue no. 4.

O R D E R.

1. The suit is dismissed with costs.
2. Decree be drawn up accordingly.

Date:- 16-08-2018.

Kavathe-Mahankal.

(Manoj C. Nepte)
Jt. Civil Judge, Junior Division,
Kavathe-Mahankal.