

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

13 SECOND APPEAL NO. 710 OF 2015
WITH CA/15955/2015 IN SA/710/2015

TRIMBAK RAMCHANDRA SHINDE
VERSUS
HABIB HAMED ABDULLA

...
Advocate for Appellants : Pawar Yadavrao P.
Advocate for Respondent : Thigale Girish K. (Naik)
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CORAM : T.V. NALAWADE, J.
DATED : 23rd June, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 197/2007, which was pending in the Court of Civil Judge, Senior Division, Beed and also judgment and decree of Regular Civil Appeal No. 194/2008, which was pending in the Court of District Judge-1, Beed. Heard both the sides.

2. The suit was filed by present appellant for relief of injunction in respect of 2 Hectar 76 R. portion of Gat No. 311 situated at village Kukkadgaon, Tahsil and District Beed. It is the case plaintiff that this portion is divided in to two pieces by one road and dispute is mainly in respect of piece of land situated on northern side of the road. It is the case of plaintiff that Gat No.

311 was partitioned amongst three brothers and the suit property had come to the share of plaintiff. It is contended that for the creation of Beed-Kurla road, the lands of many persons from that area including some lands of plaintiff and defendant were acquired. It is contended that due to this acquisition, both the plaintiff and defendant are having portions of their lands both on northern and other side of this road. Defendant owns land Gat No. 312.

3. It is the case of plaintiff that defendant got measured his land in April 2007 and notice of measurement was given even to plaintiff. It is contended that after taking the measurement, defendant started obstructing the possession of plaintiff over his portion situated to northern side of the road and cause of action took for the suit.

4. Defendant filed written statement and contested the matter. He contended that when he had suspicion that plaintiff was trying to make encroachment on his property, he got measured his land and then he realized that plaintiff had made encroachment over 2 R. portion of his land and this encroached portion is situated on the northern side of the road. It is contended that only to avoid handing over of the possession of

the said encroached portion, false suit is filed against him.

5. Issues were framed on the basis of aforesaid pleadings and both the sides gave evidence. The Courts below have held that plaintiff has failed to show his exact share received in the partition between him and other two brothers. It is also observed that the defendant has not come with the case that he has some interest in the property bearing Gat No. 311 and so, the suit is dismissed.

6. The circumstances that in April 2007, the defendant had taken steps for taking measurement of his land and admittedly, in the measurement, it was noticed that 2 R. portion was encroached by plaintiff are sufficient to infer that plaintiff indirectly wanted to use the relief of injunction to protect his possession over alleged encroached portion and he wanted to pressurize the defendant.

7. The defendant had no intention to interfere in the possession of plaintiff over the land Gat No. 311. The Courts below have rightly observed that plaintiff failed to show exact portion in respect of which there was dispute and where the defendant was trying to interfere in to his possession. Relief of

injunction is discretionary in nature and Courts below have considered aforesaid circumstances against the plaintiff. No substantial questions of law as such are involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/