

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.338 of 2013

- 1) Shibratan s/o Bishwanath Ghosh,
Age 33 years,
Occupation : Business,
R/o 5/12/23, Near Hanuman Mandir,
Padampura, Aurangabad.
- 2) Ajaysingh S/o Vijaysingh Thakur,
Age 30 years,
Occupation: Business,
R/o Mama Chowk, Padampura,
Aurangabad.
- 3) Prakash s/o Narayan Katare,
Age 32 years,
Occupation: Business,
R/o Jyoti Nagar, Aurangabad. .. **Applicants.**

Versus

- 1) The State of Maharashtra.
- 2) Dnyandeo S/o Kashinath Patil,
Age 59 years,
Occupation: Business,
R/o Plot No.C-56,
Shivshankar Colony,
Aurangabad. .. **Respondents.**

Shri. Suraj B. Gothwal, Advocate, for applicants.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent No.1.

Shri. V.P. Patil, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Judgment reserved on : 26 July 2018

Judgment pronounced on : 31 July 2018.

JUDGMENT (Per T.V. Nalawade, J.):

1) The proceeding is filed under section 482 of the Code of Criminal Procedure for the relief of quashing of CR No.I-8/2013 registered with Satara Police Station, Aurangabad for offence punishable under section 447 read with 34 of the Indian Penal Code. Both the sides are heard.

2) The crime is registered on the basis of report given by Dnayndeo Patil against Ghosh, Thakur and Prakash Katare, present applicants. The first informant, Dnyandeo Patil was owner of 3 acres 27 gunthas of land Gat No.94. Under a registered sale deed dated 1-7-1994 Patil sold 1 acre 10 gunthas portion of this land to Ursal and Manchere. Boundaries of the portion sold were as under :

To East : property of Subhash Kachru,

To West - remaining portion of land Gat No.94;

To South : land of one Malani; and,

To North : property of one Ghare.

3) In the year 1994-95, after selling the aforesaid portion to Ursal and Manchere, the first informant prepared plots in the remaining land and disposed of those plots. Thus, apparently the first informant has no concern left with the property allegedly involved in the dispute and the owners have not come forward to give F.I.R. about the grievance raised by Dnyandeo Patil.

4) It is the case of first informant that the purchasers Ursal and Manchere had executed general power of attorney in favour of applicant Nos.1 and 2 in respect of 11.5 R portion of aforesaid 1A 10G portion. It is contended that in the power of attorney the boundaries of this portion were not described. It is contended that, applicant Nos.1 and 2 ought to have taken possession of only eastern portion but they have taken possession of some western portion of aforesaid land Gat number and

they have erected wire fencing to make encroachment on Plot Nos. 1,2, 3 and 4 and adjacent road having width of 20 feet which is part and parcel of the property developed by the first informant.

5) It is the case of the first informant that Manchere cancelled the general power of attorney given to the applicants on 11-3-2011 by publishing his declaration in news paper. It is contended that applicant Nos.1 and 2, holder of the power of attorney joined hands with applicant No.3 in the year 2012 and they measured 1 acre 10 gunthas land purchased by Manchere and Ursal and then they took possession of the property of 11.5 gunthas from this portion and thereby they made encroachment on the property which was left with the first informant after the sale in favour of Manchere and Ursal. On the basis of these allegations the crime is registered for the aforesaid offences.

6) On the instructions given by this Court copies of the sale deeds of Plot Nos.1 to 4 which were sold by the first informant are produced. They show that the name of

the first informant is shown as vendor. Copy of plaint of R.C.S. No.835/2014 filed in the Court of the Civil Judge Junior Division Aurangabad for relief of injunction by the owners of these plots is produced on record. Defendant No.4 Manchere filed written statement in that suit on 9-12-2014. He admitted that he has given general power of attorney in favour of defendant Nos.1 and 2 of the suit, present applicant Nos.1 and 2. He is contesting the proceeding not only by filing written statement but he has raised counter claim in the suit. The submissions made and the record show that the trial Court has refused to grant the relief of temporary injunction in favour of the plaintiffs of that suit. Against the order made by the trial Court, the plaintiffs filed Misc. Civil Appeal No.148/2015 in District Court but the same is also dismissed on merits. These circumstances show that plaintiffs of RCS No.835/2014, the so called owners of plot Nos.1 to 4 failed to make out *prima facie* case of possession over these plots. The observations made by the civil court show that there is probably defect in the lay out prepared by the vendor, first informant and so there is defect in the title.

7) The police report shows that the first informant had applied to survey office for cancelling the measurement taken by the applicants. There is no record to show that the measurement taken by the applicants, which is disputed, is cancelled. Further, there is no suit filed for relief of declaration by the owners of the aforesaid plots and the suit filed is only for relief of permanent injunction. These circumstances cannot be ignored. Further, it is not disputed that Ursal and Manchere had purchased eastern portion of 1 acre 10 gunthas from the first informant and after that in the remaining portion the first informant wanted to prepare plots. If the land is measured from eastern side and if the disputed property remains in the property sold to Ursal and Manchere, then there will be very little scope for the plaintiffs of the aforesaid civil suit or the first informant of the present matter to dispute the title of the applicants. These circumstances also cannot be ignored by this Court and also by the Criminal Court after charge sheet is filed. Though it is the contention of police that encroachment is made, in view of the nature of dispute and aforesaid circumstances this Court holds that it is desirable for the

police to wait for the decision of the civil court. Only civil court can decide such dispute and it is not desirable for police to file charge sheet in such matter. This Court has no hesitation to hold that nothing can be achieved if the charge sheet is filed against the applicants and then they are made to face the trial for offence punishable under section 447 read with 34 of Indian Penal Code. In the result, following order.

8) The application is allowed. Relief is granted in favour of the applicants to the extent of quashing of the F.I.R. against the applicants. Rule is made absolute in those terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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