

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

Second Appeal No. 0428 of 2017

District : Jalgaon

Dilip s/o. Waman Patil,
Age : 50 years,
Occupation : Agriculturist,
R/o. Kasba Pimpri,
Taluka Jamner,
Dist. Jalgaon.

.. Appellant
(Original
plaintiff)

versus

Grampanchayat Kasba Pimpri,
Taluka Jamner,
Dist. Jalgaon.

.. Respondent
(Original
defendant)

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*Mr. R.O. Awasarmol & Mr. R.G. Ghode, Advocates,
for the appellant.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31ST JANUARY 2019

ORAL ORDER :

01. Present appellant is the original plaintiff who had filed Regular Civil Suit No. 059 of 2006 before Civil Judge (Junior Division), Jamner, for permanent injunction. Plaintiff had come with a specific case, that he is owner of Gut No. 196/A-3 admeasuring 03 acre 02 R situated at village Kasba Pimpri, Taluka Jamner, District Jalgaon. Defendant - Grampanchayat is the owner of Gut No.201 admeasuring

00 hectare 40 R which is adjacent to the suit land belonging to the plaintiff. The said land belonging to the defendant is towards the eastern side of the plaintiff's land. The plaintiff had contended that defendant had not measured its land, still a notice was issued by the defendant on 20th May 2006, stating that the plaintiff had made encroachment to the extent of 09 R on the land belonging to the defendant. Plaintiff contends that he has not made any kind of encroachment and, therefore, there was no occasion for the defendant to issue any kind of notice to him. It is stated that due to the act of defendant, in respect of issuing the said notice, there is apprehension in his mind, that defendant would obstruct his possession over 03 hectares 02 R from Gut No. 196/A-3 and, therefore, the suit for injunction was filed and it was also prayed that the defendant shall not take possession of 09 R land from the eastern side.

02. The defendant had resisted the suit of the plaintiff by filing written statement. It is specifically stated that the plaintiff has made encroachment towards the western side of Gut No.201. This was revealed in the measurement that was carried out by the defendant on 21-09-2005. Defendant had given necessary communication regarding said encroachment and, therefore, Collector, Jalgaon, had issued letter through Block Development Officer to

the defendant - Grampanchayat for the removal of the said encroachment on 18-05-2006. In pursuant to the said letter, notice dated 20-05-2006 was issued and an opportunity was granted to the plaintiff to put forth his say. It was also stated that no averment has been made by the plaintiff to show how the notice is illegal.

03. With these rival contentions, issues were framed and parties went to trial. Plaintiff had examined himself and filed documentary evidence. The then Upa-Sarpanch of defendant had examined himself and thereafter, documents from the office of Taluka Land Records were got produced in respect of measurement that was carried out in respect of Gut No.201. After hearing both sides, the trial Court had come to the conclusion that the plaintiff is the owner of Gut No. 196/A-3 and that land is in his possession. He has failed to prove that the defendant is obstructing his possession over the said land. The defendants have proved that the plaintiff has made encroachment on Gut No.201 to the extent of 09 R. The suit came to be dismissed. The said judgment and decree has been challenged by the present appellant before District Court in Regular Civil Appeal No. 108 of 2011. The said appeal was heard by learned District Judge-4, Jalgaon and it was dismissed on 23-01-2017. Challenging the said judgment and decree, the original plaintiff has filed

present Second Appeal.

04. Heard learned Advocate for the appellant. He submitted that both the Courts below have not considered the evidence properly. Both the Courts below have failed to consider that though the TILR map was got produced by the trial Court, author of the map i.e. TILR was not examined. In absence of his evidence, both the Courts below should not have placed reliance on the said map. No other legal evidence was adduced to prove the alleged encroachment by the plaintiff. There was no attempt on the part of the defendant to get the land measured again by resorting to the provisions under Order XXVI of the Code of Civil Procedure. Both the Courts below have wrongly held that the plaintiff has made encroachment to the extent of 09 R over the land belonging to the defendant and thereby refused to grant relief of injunction to the plaintiff. Learned Advocate for the appellant, therefore, submitted that substantial questions of law are involved in the matter.

05. The first and the foremost point that is required to be considered is that the plaintiff claimed ownership over Gut No. 196/A-3 admeasuring 03 hectares 02 R. Defendant has not disputed the same. It was the case of the plaintiff, that the defendant had issued notice dated 20-05-2006 and thereby asked

him to hand over the possession of 09 R land which, according to the defendant, was part of Gut No.201 belonging to them. The moot question is, whether mere issuance of that notice which was, in fact, in respect of the property which was, according to the defendant, belonging to them, any apprehension could have been in the mind of the plaintiff that there would be disturbance by the defendant to his land or possession to the extent of 03 hectares 02 R from Gut No. 196/A-3. It appears that the cause of action is misconceived. Another fact is that the plaintiff had no intention to believe the measurement that was stated to have been carried out by TILR on the request of defendant. There was every opportunity for the plaintiff to get the land measured during the course of the suit, but he has not adopted that procedure. On the contrary, it appears that prayer was made that the defendant should be restrained from taking possession of 09 R land towards east of his land. Thereby, the plaintiff intended to say that whatever 09 R land which is in dispute, was part of his land i.e. Gut No. 196/A-3. This could have been shown by the plaintiff only by getting the land measured. Now, the appellant - plaintiff cannot say that it was the duty of the defendant to get the land measured during the pendency of the suit.

06. In fact, both the Courts have raised issue / point stating that whether the defendant has proved

the encroachment to the extent of 09 R by the plaintiff. This issue / point, in fact, is redundant. When the plaintiff had come with a specific case and the suit property was restricted to Gut No. 196/A-3, by putting burden on the defendant in respect of showing encroachment to the extent of 09 R, which is part of Gut No.201, which is not the suit property at all, it appears that unnecessary exercise has been done. When it was specific case of the plaintiff, that his ownership is restricted to area admeasuring 03 hectares 02 R, then it was for him to prove that the alleged disputed area is not part of his property since he had knocked doors of the Court.

07. One more way was available to the plaintiff. It appears that along with list Exhibit 51, the original documents regarding measurement were produced. It appears that the documents which were produced by the plaintiff were exhibited later on. That means, the plaintiff had idea about the documents in respect of measurement done by TILR are on record. Even at that point of time, plaintiff could have asked for appointment of court commissioner but the said fact has not been done.

08. Mere issuance of said notice which was, in fact, a show cause notice, it cannot be stated that there was any disturbance by the defendant to the

possession of plaintiff over 03 hectares 02 R from Gut No. 196/A-3 and, therefore, factually both the Courts below have come to the conclusion that the plaintiff has failed to prove obstruction at the hands of defendant.

09. Under such circumstance, no substantial question of law is arising and, therefore, appeal is disposed of as not admitted.

(Smt. Vibha Kankanwadi)
JUDGE

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