

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

WRIT PETITION NO. 2133 OF 2020

ANIL MURLIDHAR BORKAR
VERSUS
MANOJ PRABHAKAR BORKAR AND OTHERS

...
Advocate for the Petitioner : Shri S. S. Bora
Advocate for Respondent Nos. 1 and 2 : Shri V. D. Sapkal
Sr. Advocate h/f. Shri S. R. Sapkal

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 2nd MARCH, 2020

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PER COURT :

1. The plaintiff is aggrieved by the refusal of the Trial Court, as well as, the Appellate Court in granting temporary injunction vide orders dated 17/08/2019 and 20/12/2019.
2. Respondent No. 3 Grampanchayat, is not a contesting Respondent at this stage in this matter.
3. I have considered the strenuous submissions of the learned Advocate for the Petitioner, original plaintiff in Regular Civil Suit No. 71/2019 and the learned Senior Advocate appearing on behalf of

Respondent Nos. 1 and 2, original defendants.

4. The following aspects in view of the submissions of the learned Advocates and the record available, are undisputed :-

(a) The plaintiff is the owner of land Gat No. 388/2.

(b) Defendant Nos. 1 and 2 are the owners of land Gat No. 388/1.

(c) Going by the map prepared by the Deputy Superintendent of Land Records Newasa, District Ahmednagar, the plaintiff's land Gat No. 388/2 abuts a small rectangular patch Gat No. 389 belonging to the PWD, on the eastern side.

(d) The Bahirwadi road and the Shrirampur road are on the eastern and the southern side, respectively.

(e) Land Gat No. 381 is on the northern side of the plaintiff's land.

(f) The land of the defendants Gat No. 388/1 appears on the western side of the plaintiff's land Gat No. 388/2.

(g) A sub-station belonging to the Maharashtra State Electricity Generation Company Limited in land Gat

No. 390 is on the western side of the land of the defendants 388/1.

5. A copy of the sketch map prepared by the Deputy Superintendent of Land Records is placed on record. For easy understanding, the owners of the properties are mentioned in the sketch map. The said sketch map is marked as Exhibit -'X' for identification and shall be a part of this order.

6. The learned Senior Advocate appearing on behalf of the defendants submits that his clients have been erecting a construction and presently are developing shops on the southern side facing the Shrirampur road in land Gat No. 388/1 and have no reason or intention to encroach upon the land of the plaintiff in Gat No. 388/2.

7. In the light of the above, I have perused the sale-deed dated 14/07/2004 vide which the Petitioner has purchased land Gat No. 388/2. On internal page No. 2, land Gat No. 388/1 is mentioned on the eastern side of

land Gat No. 388/2. The boundaries *insofar* as the north, south and west side seem to be appropriate, except that the road Bahirwadi appearing on the east side of the plaintiff's land Gat No. 388/2 does not appear since the land of the defendants 388/1 on the western side of the plaintiff's land, has been mentioned in the description as being on the eastern side of the land of the plaintiff.

8. I am of the view that all these documents will have to be considered by the Trial Court while deciding the suit. For the present, the defendants categorically submit that they have no reason to encroach upon the land of the plaintiff and would be completing the construction of the shops on the southern side facing the road to Shrirampur in land Gat No. 388/1.

9. The learned Advocate for the plaintiff submits that he would move an application before the Trial Court for appointment of a court commissioner in the peculiar facts and circumstances of this case. The learned Sr. Advocate submits that it can be left to the

Trial Court to decide whether to appoint a court commissioner prior to the recording of oral evidence of both the sides.

10. Needless to state, if a court commissioner is appointed by the Trial Court in the peculiar facts and circumstances of this case, the court commissioner would not be below the rank of the TILR. The measurement would be carried out on the basis of the revenue records available and the maps in the records of the said office as the factual geographical location of these lands will have to be considered to assess as to whether there was any erroneous mentioning of the boundaries especially on the eastern side, in the sale-deed of the plaintiff dated 14/07/2004.

11. As such, this petition is disposed off. The Trial Court is expected to consider the entire record and the map, meticulously while deciding the suit, in view of the oral and documentary evidence.

(RAVINDRA V. GHUGE, J.)

shp/-