



ONLINE DISPUTES RESOLUTION FOR LAND ENCROACHMENT CASES (SUGGESTED SYSTEM)

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Abstract: *Land encroachment cases are depend upon the map drawn for the cause of action. If the government survey map and drawn map is superimposed then it gives clear position about an encroachment. If encroachment is found, then as per interest of parties, the matter can be settled. Prior to filing such cases before the court of law, such disputes can be settled by online method. Portal for parties supplied their pleading and offer. The porter for mediator may mediate by online method. If the matter could not settle then the case may go for adjudication before court of law. Considering the computer availability and literacy, I suggested system for partly online and partly offline. As per suggested system, it is necessary to prepare portals and availability of the map superimposition by online method.*

Key words: *ODR, Mediation, encroachment suit, conciliation*

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1. INTRODUCTION

Land encroachment cases comes under title like Suit for removal of an encroachment, Suit for Injunction, or Suit for possession. Most of cause of the action arose due to negligence or ignorance of legal knowledge at the sale transactions that may be the reason for these suits. The disputes may arise under so many circumstances.

To prove encroachment it is necessary to prove title of land and map for the alleged encroachment (cause of action). While proving title of land, most of times the defendant simply denies the title without specific denial. Section 110 of The Evidence Act, speaks that, Possession is prima facie proof of ownership. Possession by itself is an indication of title. A person in possession is entitled to protection against all persons except the true owner. Therefore, a person in possession is entitled to remain in possession until another person disclose a better title. While purchasing or selling lands/plots a basic enquiry is necessary. Legal Maxim is that, "*NEMO DAT QUOD NON HABET*", it means , a person cannot transfer better title than what he has. In some cases the defendant did not dispute title of the plaintiff but comes with defence of adverse possession, easement, license, lease. For the consideration of the defence for adverse possession it is necessary to remember legal maxim, *VIGILANTIBUS NON DORMIENTIBUS JURA SUBVENIENT.*' It means law helps to vigilant and not to lazy.

When there is no serious dispute for title of land and other defence except denial of encroachment, then only Issue remains, Whether an encroachment is committed or not ?. While proving an encroachment, map plays major role. How to conduct Survey and how to draw map is a vast subject and it requires off-line practical process.

Suggested system is hybrid method , partly online and partly off-line. Drawing map is offline, checking map is online and mediation or conciliation is online/offline method. While settling the matters, it is necessary to remember, what is issue in dispute and how the disputing parties value the issue. Though it is difficult to answer the question in complex cases, but it is some what simple to decide the land encroachment cases, if focused on the interest of the parties as the ODR technique supports in communication, exchange of documents, decision making process.



2. SUGGESTED METHOD:

Step - I:- Porter for Decision support :

Transfer of property plays an important role. While purchasing any field or plot the purchaser has to make some enquiries to avoid such disputes as:-

1. See mutation entries to verify Tenancy rights, any other right or interest, like road for other cultivators, any debt from Bank.
2. Whether there is need of permission from any authority?
3. While ascertaining the title, see whether it is an ancestral property or self acquired property, any share from other person and objection from other person, interest of minor etc.
4. Take search report from the Sub Registrar office.
5. For precautions, give public notice if any doubt about title or right or interest.
6. Verify the Survey Map and confirm about the area shown in the record of right and whether there is a separate map for the alleged portion or recorded map.
7. Make enquiry about any dispute pending about an encroachment.
8. As far as possible, before executing the sale deed, measure the land from authorized agency to confirm the location and extent. After purchasing the property, if the share purchased is not recorded in the whole map of the said field or plot, then follow the provisions of Maharashtra Land Revenue Code and its rules to make partitions and to record entry in the survey map.
9. See for the compliance of provisions of Fragmentation Act, Land Acquisition Act, Tenancy Laws, and Ceiling Act etc.

While purchasing the plot from City then go through following questions:-(In addition to above relevant points)

1. Go through the title deed .
2. Verify the town planning map ,city survey map.
3. Verify about debt from Bank
4. Verify about Slums Act
5. Take search of the property from the Sub registrar office.
6. Whether the lay out is sanctioned layout or not.
7. Whether it is duly converted land.



8. Whether it comes under green belt.
9. Whether permission from any authority is necessary.

In both types of sale-purchase transactions, the seller and purchaser have to go through the rights and liabilities as described in the Transfer of Property Act, 1882.

The above information should be displayed on the portal for the parties, so that the parties may confirm their primary information.

From the data feed by the parties, firstly diagnosis the problem, ascertain cause of action, and implementation of cause of action. All question would be closed questions are based on rule-based reasoning tool that is collection of rules in the form of ' *If ---then* ' is useful [See flow chart]. This protocol permits the parties to enter their data to predict the possible output.

For Goal of plaintiff, it has to be ascertain, whether it is his goal to use the land in dispute or to take compensation amount for the encroached land. Some material information has to be gathered from the plaintiff, for example, title, map drawn for cause of action, notice issued to the defendant. The system should provide him the time required for deciding the claim up to execution proceedings. The probable defence from the defendant. This process explains the probabilities and options for the settlement out of court.

For goal of the defendant's the system shows the strength of defence for adverse possession etc. and possible outcome. It also gives strength of defence for simple denial of title of the plaintiff. The consequences of removal of encroachment if the suit is decreed .

Example: Probable Issues are :

- 1] Whether plaintiff proves title to the suit land?
- 2] Whether plaintiff proves an encroachment?
- 3] Whether defendant has perfected his title by adverse possession?

From these issues prediction is possible. Issue no. 1 and 2 are affirmative then suit decreed. If issue no.3 is affirmative then suit dismissed.

Prediction to win the suit: Let us consider the each Issue has 100% chance. For Issue no.1 has 70% chance means defendant has 30% chance. Issue no.2 has 50 % chance means the defendant has also 50 % chance and Issue no.3 has 40 % chance means defendant has 60% chance.



Calculation for plaintiff: $0.70 \times 0.50 \times 0.40 = 0.14$, it means the plaintiff has 14 % chance to decree the suit.

Calculation for Defendant: $0.30 \times 0.50 \times 0.60 = 0.06$, It means the defendant has chance 6 % to dismiss the suit.

Issue	Party	Prediction %
Issue No.1	Plaintiff	70%
	Defendant	30%
Issue No.2	Plaintiff	50%
	Defendant	50%
Issue No.3	Plaintiff	40%
	Defendant	60%

Step-II: Map comparison and area calculation:

Offline process: Literature : Under order VII Rule 3 of the Civil Procedure Code and Bombay Amendment dated 1-11-1966 and 1-10-1983, maps or plans made for the purpose of any cause must be proved to be accurate, would clearly indicate that the maps or plans made for the purpose of any cause must be drawn that those maps or plans are accurate which are prepared at the instance of the parties for the purpose of the cause. The onus of proving that such a map is accurate lies on the party who produced it. The maps must be proved by the person who has prepared them. Thus, it clearly shows that, if the map is prepared which does not tally with the position on the ground then it becomes meaningless. If any measurer prepares a map for the satisfaction of the party then though the party may get decree but when the decree has to be executed, then the position has to be tallies according to the record and in such situation, it may reopen the said question again.

As per section 83 of the Indian Evidence Act, The mere proof of the map by itself is only proof of the fact that the map was prepared by the maker thereof. The fact that a particular person prepared a map or in other words made certain statements by lines, cannot, without or apart from and independent of the proof of the correctness of its contents have any bearing on the matters in issue.

Private documents /maps may be admissible under the Evidence Act, as statements made by the maker thereof by means of lineal representations, of facts in issue, if they are proved to



have been prepared by or under the direction of competent persons having special knowledge thereof.

3. TESTING MAP FOR CAUSE OF ACTION AND ENCROACHMENT:

The measurement has to be carried out as per the survey map wherein there should be two permanent marks. These permanent marks have to be verified with third mark. Then by the help of two points/ marks the entire area has to be measured for ascertaining the actual encroachment. The measurer has to make efforts to find out the traverse marks. He has to carry out the measurement commencing it from the fixed point available and reach the disputed plot. The map drawn at spot and Survey Map has to be compared to see the primary test of the map. This is called as superimposing the Map. Firstly see the area of a field shown in the Survey Map. Then also see the area of a field shown in the Drawn map. It is to ascertain the allegation of party about his ownership and possession. If drawn map is drawn in different scale than the survey Map, then we have to either Enlarge or Reduce the Map in the scale. Then superimposition is possible. Superimpose means to lay a survey map on drawn map. Some methods are re-plotting, Graphical method, mechanical methods like Eidograph and Pantograph Instrument, Photographic method etc.

4. COMPUTERIZED METHOD:

With the help of computer software, it is possible, for example, with the help of AUTOCAD software, we can calculate (1) The area of Map (2) Map Enlarging and Reducing and (3) Superimposing. You can test the map and encroachment etc.

The Map drawn for cause and Survey Map has to be scanned. Then bring scan maps into proper scale and to verify its lengths (dimensions). Then Enlarge or Reduce any map. Lastly Superimpose Maps.

How to bring scan Map into required scale : (For example scale 1:500)

Firstly scan the drawn Map and Government Survey Map.

Command: AUTOCAD menu utilities loaded.

Command: Image attach.

Specify insertion point <0,0>:

Then image size will come on screen.

{Suppose image size: Width : 215,900000, Height:199.390000, Millimeters [We want to convert in our Scale Map 1:500.



Specify scale factor or [Unit] <1>:21.62

How to check dimensions of line:

Command: Dim aligned.

Specify first extension line origin or <select object>:

Specify second extension line origin : <ortho off>

Specify dimension line location or [Mtext/Text/Angle]:

Dimension text = 304.67

How to calculate area.

By command Line specify lines of your Map or location of the Map.

Command: region

Select objects: Specify opposite corner:-----found.

Select objects: 0 loop extracted.

Command: -pline

Specify start point:

Current next point or [Arc/Close/Halfwidth/Length/Undo/Width]:

Command: area

Specify first corner point or [Object/Add/Subtract]:0

Select objects:

Area = -----, Length = -----

Command: Scale 1 found

Specify base point:

Specify scale factor or [Reference]: 0.5

How to enlarge or reduce the Map

Command :-scale 1 found

Specify base point:

Specify scale factor or [Reference]: (To enlarge above map into 1 : 1500)

Give command 6

How to check our enlarged map

Command : dim aligned

Specify first extension line origin or <select object>:

Select object to dimension:



Specify dimension line location or [Mtext/Text/Angle]:

Dimension text = -----

How to superimpose the Map

Command: ALIGN

Select objects and specify first source point and then first destination point line this at least select two objects and source points

Then give command MOVE

Then specify base point or displacement and like this second point of displacement or <use first point as displacement>:

Give command: specify opposite corner:

[Please note that the Computer test is given only for knowledge and yet it is not known test .My intention is to give you a method to test map.]

Step-III : Help of previous experience for settlement : From the previous case laws or from the examples discussed to solve the probable solution , may be helpful to consider the proposed proposal from the other side. If proposal is not accepted or there is other causes for non settlement then parties can be called for offline mediation process. Some of matter are possible to settle before Lok adalat[6].

Step-IV: To go offline conciliation or mediation. If mediation fails then matter goes to court for adjudication.

5. WORKING OF SUGGESTED SYSTEM:

Considering the computer literacy and availability of computer in India, it is necessary to prepare separate portal for the online dispute resolution. Plaintiff will submit his information by choosing close question by marking over it. He has to supply the mobile number, email address of himself and for the defendant. Said answer automatically creates story/allegations of the plaintiff. The plaintiff will upload his city/tipan (government survey map) and drawn map for cause of action. At portal the superimposition automatically carried out with area of an encroachment. By this way plaintiff will feed data for his pleading/allegations. Then plaintiff may put his offer for settlement by close question and may mention additional offer in the window space. This report saves in mediator computer. This process creates a case number automatically.



Then the notice may be issued to defendant by manual or email, mobile sms to ask him to take help of portal for the defendant for the automatic created case number. Defendant will submit his information by choosing close question by marking over it. Said answer automatically creates story/defence of the defendant. The Defendant will upload his city/tipan (government survey map) and drawn map, if any. At portal the superimposition automatically carried out with area. By this way the defendant feed his defence. Then defendant may put his offer for settlement by close question and may mention additional offer in the window space. This report saves in portal of mediator computer.

The mediator will study the allegations and defence. He may call documents by email from both parties. He will start his mediation process by online method to give offer and counter offer. If the dispute is settled, the settlement agreement may confirm by online method. If the parties desires to execute agreement before mediator then at legal aid office such process can be perform. Thus it is a first opportunity to both parties to settle their matter by online method.

If the terms of parties could not settle by online method, then mediation process may continue from the said stage by offline method. In both process the rules for mediation will apply.

If the matter is not settled at mediation then the matter can go before court for adjudication, if the plaintiff files his suit. Such suit shall bear the report of failure of mediation.

6. CONCLUSION:

In ODR suggested system, there is need to make program that gives more information to the litigants. Such resolution system may be possible for small disputes but it is also possible when only small point remains in a dispute and that can be decided by mediation, conciliation. By the use of mediation, via computerized method, it allows audio and video communication through Internet, enable to go through documents send by email and then can mediate the matter. For that purpose, the program for mediation can be fixed online with both parties. In this method, it is also possible to provide legal aid to the needy person by online method.



Books for More detailed study:

- [1] Manual of Land Surveying Compiled by R.G. Gordon, I. C.S. Government Nagpur Press.
- [2] City Survey Manual, By: F.G.H. Anderson Published under Revenue Department
- [3] Civil Procedure code, 1908
- [4] Indian Evidence Act, 1872
- [5] Legal Services Authority Act, 1987
- [6] Need of Expert Determination before A.D.R.(Lok Adalat) in Land Encroachment Civil Suits (Suggested Method), International Journal of Scientific and Research Publications, Volume 3, Issue 11, November 2013 ISSN 2250-3153

