

Order below Exh.39 in Reg. Civil Suit No.400/2017

(Passed on 23/08/2018)

This is an application filed by plaintiff as per Order 39 Rule 1 of the Code of Civil Procedure whereby the plaintiff asked for injunction against defendant no.10.

02] On perusal of plaint and the application, it reveals that the plaintiff is not in possession of the suit property. The plaintiff is used to reside at her matrimonial house. The plaintiff filed this suit for partition and separate possession of her share in the suit property.

03] On perusal of contention in the application, it reveals that on 14/12/2017, plaintiff came to know that the sugarcane crop was cut down and the field was made ready for the next harvest. The plaintiff inquired about it and came to know that one villager named as Gotya was done this act as per the say of defendant no.10. Hence, the plaintiff filed this application against defendant no.10 for not to change the nature of suit property.

04] Defendant failed to file their say. Hence, the application is proceeded without say of defendant.

05] On the basis of contentions of the plaintiff, following points arise for my determination and I have recorded my finding thereon along with reasons mentioned below :-

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Does the plaintiff prove that prima facie case is in her favour ?	No.
2.	Whether the balance of convenience lies in favour of plaintiff ?	No.
3.	Whether plaintiff would suffer an irreparable loss, in the event of refusal of injunction ?	No.
4.	What order ?	Application is rejected.

REASONS

As To Point Nos.1 To 3 :-

06] As all the points are inter-related, I have discussed them together to avoid the repetition of facts and for the sake of convenience.

07] On perusal of averments in the plaint and the application, it reveals that the plaintiff has not contended that she is in possession of suit property. Moreover, it reveals that the change of suit property contended by the plaintiff is in the usual course of cultivation. Therefore, the fact that the change in the suit property is of such a nature as to damage the suit property is not prima facie established. Moreover, the act i.e. to make ready the field for harvesting is of defendant no. 10 is not prima facie established. The plaintiff had not averred that the sugarcane crop in the suit property is of her. Therefore, the relief asked by her is without locus standi. Hence, the plaintiff failed to prove prima facie case in her favour. Moreover, in the absence of prima facie

case, irreparable loss will not be caused to the plaintiff and the balance of convenience also doesn't lie in favour of plaintiff. Hence, I answer Point nos. 1 to 3 in the negative and as my answer to Point no. 4, I proceed to pass the following order :-

ORDER

Application is rejected.

Sd/-

(M. M. Mali)

Date: 24/08/2018

4th Jt. Civil Judge, Jr. Dn., Satara