

Order Below Exh. 5 in Regular Civil Appeal No. 36 of 2019

1. The instant appeal is filed by the appellant who was defendant no.1 before the trial Court in Regular Civil Suit No. 149/2016 i.e. old Regular Civil suit No. 634/2019. The suit was filed regarding Block No. 58/1A at village Kangoni Taluka Newasa. The defendants including the appellant filed written-statement and contended that they are in possession of 2 guntha of land and filed the counter claim, for the perpetual injunction against the plaintiff seeking to restrain the plaintiff from causing obstruction over 2 Guntha of land. It is the contention of the appellant that appellant is in possession of 2 guntha of land and therefore, respondent may be restrained from causing obstruction into the possession of the appellant over the suit property.

2. Perused the application and say. I heard both the sides.

3. Looking to the rival contentions, following points arose for my determination. I have given my findings thereon for the reasons recorded below :

<u>Points</u>	<u>Findings</u>
1 Whether the prima-facie case lies in favour of the defendant-appellant for grant of temporary injunction as prayed ?	...In the negative.
2 Whether the balance of convenience lies in favour of the appellant-defendant ?	...In the negative.
3 Whether the inconvenience would be cause to the defendants if temporary injunction application is granted in favour of them ?	...In the negative.

4 What order ?

...As per final
order.

Reasons

As to points No.1 to 3 : -

4. The criticism has been advanced by the respondent that the counter claim has not been challenged and therefore, the appeal is not tenable. Further contention is such that the suit was decided on merit and the counter claim was dismissed on merit.

5. In order to ask for temporary injunction to restrain the other side from interfering into the possession of 2 guntha of the land of the appellant, it is required to be shown prima-facie that though the claim of the appellant was not accepted but the appellant has been in possession of 2 Aar land. I found that the said contention before the trial Court was not substantiated. There is no evidence at this stage to show that the appellant is in possession of said land. Therefore, the appellant has no prima-facie case. Consequently, the balance of convenience does not lie in favour of the appellant. In such situation, if the application for temporary injunction is not granted no irreparable loss would be caused to the appellant, which can not be compensated in terms of money. Moreover, I want to mention here that the trial Court has dismissed the contention on merit and if temporary injunction is granted the situation is likely that the respondent may be dispossessed and therefore, it is not prudent to grant the relief of temporary injunction as prayed. However, I also made it clear that this discussion and findings pertains to this application only. Accordingly, I answered points No.1 to 3 in the negative and proceed to pass the following order.

Order

1. Application Exh. 5 is rejected.

2. The costs of the application will be the costs in cause.

NEWASA
DATE : 18/12/2019

(S. M. BELKAR)
DISTRICT JUDGE-1
NEWASA