

ORDER BELOW EXH. 5 IN R.C.S. No. 89/2024.

Heard Id. Advocate Mr. M. P. Dev for the plaintiff. He have submitted that, the deceased father of the plaintiff had been filed RCS No. 95/2018 for the declaration and injunction. The said suit was decided by judgment dtd. 26/07/2023. It was held in the said judgment that the plaintiff and his father is having possession on the suit property. Now, the defendant are going to obstruct to the possession of the plaintiff on the said property. Now, there is sowing session. If, the obstruction continues then the plaintiff will unable to cultivate the suit property. It will cause loss of earning and question of daily bread butter will be arise. Therefore, prays to grant ad-interim exparte injunction against the defendants.

2. Perused the application and the record. The plaintiff have produced 7/12 extract of the suit property gat No. 240. It appears from the same that, the said land is belongs to the Government. The applicant have produced xerox copies of the judgment and decree passed in RCS No. 95/2018. The plaintiff did not produced authenticate copy of the judgment and the decree on the record. The authenticate copy of the said document is public document. The xerox copy could not having any evidential value. For sake of argument we will considered the xerox copies at the primary stage. It appears from the observation in the judgment that, the property survey No. 138 is not allotted to the plaintiff and his father. They are failed to establish their right of cultivation on the suit property. Therefore, it is clear that, the plaintiff and his father did not having title on the property survey No. 138. It further reveal from the observation in the judgment that the present plaintiff had been filed affidavit of chief in the said matter and submitted on oath that, they are having possession of the property since long time. The Maharashtra Government was the defendant in the said

matter. The defendant was failed to cross examined the plaintiff. Therefore, the oral evidence of the plaintiff was unchallenged and consider without any obstacle. It means that, the possession of the plaintiff was considered due to no any objection was raise by the other party. Even, for the sake of argument we will consider the possession of the plaintiff on survey No. 138 but the injunction granted in the said judgment was conditional. As per the said judgment the defendant i.e. Maharashtra Government was restrained from causing obstruction to the possession of the plaintiff without following due procedure of law. It means that, the said injunction was not for unlimited period but till the defendant obtained the possession from the plaintiff after following the due process. The present defendant were not the party in the said suit. They did not got an opportunity to challenge the evidence of the plaintiff.

3. Even, it is important to mention that, the said judgment was passed one year ago. The possibility of change in situation could not be denied. Even, in the said judgment the property number was given as survey No. 138 having area of 4 H. 0 R. However, in the present matter the suit property is gat No. 240 and the area of the property is given as 4 H 71 R. Though, the plaintiff have mentioned that, old property number of gat No. 240 was as survey No. 138. But, the area given in the present matter is more than the area mentioned in the judgment of RCS No. 95/2018. The plaintiff did not produced any document on the record to show that, both the properties are one and the same. The allegation of the plaintiff is only regards to the obstruction for the cultivation. Which can be calculated in terms of money. In view of above mentioned discussion I did not found strong prima-facie case to grant ad-interim exparte injunction. Before deciding the application opportunity of hearing needs to be granted to the

defendant. Hence, I am going to pass following order :-

ORDER

Issue show cause notice to the defendant No. 1 and 2 as to why temporary injunction should not be granted in favour of plaintiff returnable on /07/2024 and EP & SB is allowed.

Date: 05/07/2023.

Sd/- xxx
(A.H.Shaikh)
2nd Jt. Civil Judge, Junior Division,
Akot.

CERTIFICATE

I affirm that the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Steno : R.C.Bajpai.
Name of Court : A. H. Shaikh
2nd Jt. Civil Judge, J. D., Akot.
Date of Judgment : 05/07/2024.
Judgment signed by P.O. on : 05/07/2024.
Judgment uploaded on : 06/07/2024.