

Order Below Exh. 5 in Reg. Civil Suit No. 45/2022

Shatabai vs.. Kishor

CNR: MHAK08-001179-2022

(Passed on 10th April, 2024)

The plaintiff has invoked the jurisdiction of this Court vide Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC') for restraining the defendant from causing obstruction to the possession of plaintiff over suit property land block No. 80 admeasuring 02 H. 30 R. bounded as towards **East-** Shri Deshmukh, **West-** field of Laxman, **North-** field of Heda **South-** field of Abbas, situated at village Dapki, Tq. Dist. Akola. (Here-in-after referred as "Suit Properties".)

2) According to plaintiff, the State Government allotted the suit property to the plaintiff and plaintiff is cultivating the suit property since the date of allotment. The plaintiff is issue-less widow. The defendant misused the situation of the plaintiff. On dt.14.06.2022 the defendant restrained the plaintiff from entering in the suit property and threatened her with dire consequences. The plaintiff has reported the act of the defendant to police station, but no use. This fact constitute cause of action to the plaintiff to file this suit.

3) Defendants failed to file the written statement and suit is without written statement of defendants.

4) From the foregoing pleadings and after hearing the submissions advanced by the plaintiff, following points arise for determination. My findings are mentioned against each point for the reasons given further.

Sr. No.	<u>Points</u>	<u>Findings</u>
1)	Whether plaintiff has made out <i>prima-facie</i> case for grant of temporary injunction ?	In the affirmative
2)	Whether plaintiff would suffer irreparable loss if temporary injunction as prayed is refused ?	In the affirmative
3)	Whether the balance of convenience lies in favour of plaintiff ?	In the affirmative.
4)	What order ?	Application is allowed.

SUBMISSION OF PLAINTIFF :-

5) Mr. N.S.Wahane has submitted that the defendant without any reason causing obstruction to the possession of the plaintiff. He is trying to dispossess the plaintiff to the possession of plaintiff over the suit property. The plaintiff has a prima facie case and balance of convenience is also in favour of plaintiff and plaintiff is entitled for discretionary relief.

REASONS

AS TO POINT NO.1 :-

6) To show the entitlement of the relief of temporary injunction plaintiff shall establish prima facie case, balance of convenience is tilt in his favour and refusal of injunction would result in irreparable loss. It is also trite that the relief of injunction being an equitable relief shall not be granted without verifying the factual position and without ignoring the consequences on the right of other side. In other words, the relief of injunction shall not affect on the right of other side who is not in fault.

7) The age of the plaintiff is 60 years old and the plaintiff is issueless widow is not disputed fact. The 7/12 extract on record

discloses that the plaintiff is owner of the suit property and taking crop from suit property since the year 2019 to 2023. Namuna No.8A also discloses ownership and possession of the plaintiff over the suit property. Copy of NCR discloses that on dt.14.06.2022 the defendants have restrained the plaintiff from entering in the suit property and threatened her with dire consequences if she entered in the suit property.

8) The above mentioned situation discloses that the defendants has caused the obstruction to the possession of the plaintiff over the suit property. Thus, at this juncture the plaintiff has prima facie case. In such situation refusing the application may affect on the right of the plaintiff. So balance of convenience is tilt in favour of plaintiff. In such situation refusal of application may result in irreparable loss of the plaintiff. In other words plaintiff succeed to pass the triple test which is required for entitlement of the discretionary relief. Therefore, I have answered point No.1 to 3 **as affirmative**. In the result, I proceed to pass the following order;

ORDER

- 1) Application is allowed.
- 2) The defendants, their servant, agent or anybody claiming through them are hereby temporary restrained from causing obstruction to the possession of plaintiff over the suit property till final decision of suit.

Date : 10/04/2024

(Pritesh Bhandari)
Civil Judge (Jr. Dvn.)
Barshitakli.

