

MHAU130000042023



ORDER BELOW EXH.NO.12 IN R.D. No. 1/2023
(Zainuddin Vs. M.C.A.)

1. D.H. has filed this application for grant of temporary injunction against J.D. till disposal of this execution application.

2. D.H. has submitted that, he had filed R.C.S. No. 345/1998 against J.D. Nos. 1 and 2. His said suit was decreed and J.D. Nos. 1 and 2 were restrained from obstructing possession of plaintiff over suit property without following due process of law. J.D. No. 1 and 2 have not preferred any appeal against decree passed in R.C.S. No. 345/1998 till date. In R.C.S. No. 345/1998 decree was passed by the Court on 03-05-2003, but D.H. has not filed any execution proceedings against J.D.

3. D.H. has submitted that J.Ds. are trying to obstruct his peaceful possession over suit property by filing various proceedings before Hon'ble Supreme Court without making him as party to those proceedings. J.Ds. are trying to obstruct possession of D.H. over suit property. Hence D.H. has prayed that, temporary injunction be granted in his favour restraining J.D. No. 1 and 2 from obstructing his possession over suit property till disposal of this execution proceeding.

4. J.D. No. 2 has filed reply to this application at **Exh. No.14**. J.D.No. 2 has submitted that D.H. has filed this execution

application on 03/01/2023 when decree was passed in RCS No.345/1998 on 03/05/2003. Hence, this execution petition is barred by limitation. D.H. has concealed many material facts from this Court. When D.H. was aware of various proceedings filed by J.D. No. 2, he ought to have appeared in those proceedings before different courts.

5. J.D. No. 2 has submitted that agricultural lands of village Harsul and Jadhavwadi were acquired by Land Acquisition Officer and thereafter final award was passed. Compensation was paid to affected persons, i.e. land owners and land owners have handed over physical possession of said lands in favour of J.D. No.2. After completion of acquisition proceeding and after payment of entire compensation amount, land owners of survey No. 10,12 and 13 had filed proceedings before Government, thereafter, before the Hon'ble High Court and thereafter, before the Hon'ble Supreme Court. All the authorities have rejected claims of land owners of survey No. 10,12, and 13 and passed orders in favour of J.D. No. 2.

6. J.D. No. 2 has submitted that thereafter their names were mutated in respect of above mentioned land in revenue record. This shows that already dispute in respect of survey No. 10, situated at Jadhavwadi, Aurangabad, has been decided upto the Hon'ble Supreme Court. Therefore, this execution application is not maintainable. J.D. No. 2 has not violated judgment of this Court. But, it has acted in accordance with order passed by the Supreme Court.

7. J.D. No. 2 has submitted that D.H. is trying to mislead this Court. Name of J.D. No. 2 is already mutated in revenue record in respect of suit property. J.D. No. 2 is in physical possession of suit property. But, D.H. is trying to obstruct their possession over suit property on the basis of decree dated 03/05/2003. If, injunction is granted in favour of D.H., it will be contrary to order of the Hon'ble Supreme Court. Hence, this application is liable to be rejected.

8. J.D. No. 1 has failed to give say to this application. Hence, this application was proceeded without say of J.D. No.1.

9. **The following points arise for my consideration and findings are recorded by me with reasons :-**

Sr.No	POINTS	FINDINGS
1.	Does D.H. prove that prima-facie case is in his favour ?	In the negative.
2.	Does D.H. prove that balance of convenience is in his favour ?	In the negative.
3.	Does D.H. prove that he will suffer irreparable injury in case injunction is not granted in his favour ?	In the negative.
4.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 TO 3 :-

10. I have heard learned counsel for parties.

11. I perused this application and say submitted. I perused record of this case. D.H. has filed this execution application stating that J.D. No. 1 and 2 have committed breach of injunction order. Hence, burden of proof is on D.H to prove that J.D. No. 1 and 2 have committed breach of injunction order, which D.H. has failed to do. D.H. has filed temporary injunction application in execution application stating that he may be dispossessed from suit property.

12. Learned advocate for D.H. has failed to show any provision, under which temporary injunction application is maintainable in execution application on mere apprehension of dispossession. This application of D.H. shows that he is not dispossessed from suit property till this time. Hence, this execution application at **Exh. No. 1** for breach of injunction is not maintainable.

13. I perused judgment passed by this Court in R.C.S. No. 345/1998, Jainuddin V. M.C.A. dated 03/05/2003. This Court had restrained defendants of that suit from dispossessing plaintiff from suit property without following due process of law. In this case, as per contention of J.D. No. 2 suit property is already acquired and said land acquisition has attained finality up to the Hon'ble Supreme Court. Hence, J.D. No.2 has legal right to obtain possession of suit property in accordance with procedure laid down under law.

14. In this application, D.H. has failed to give date and

manner in which J.D. No. 1 and 2 have unlawfully obstructed his possession over suit property. In this case, J.D. No. 2 has pleaded that land from survey No. 10 was acquired by Government. That litigation is decided upto the Hon'ble Supreme Court. D.H. has failed to file counter affidavit to rebut claim made by J.D. No. 2. This shows that there is disputed question of fact and law between both the parties i.e. D.H. and J.D. No.2, which cannot be decided in this temporary application.

15. D.H. has failed to show that prima-facie case is in his favour. When D.H. has failed to prove that prima-facie case is in his favour, balance of convenience and irreparable injury cannot be taken into consideration. Therefore, I decide point No. 1 to 3 against D.H.

As to point No. 4 :-

16. In view of findings given above, it is clear that, D.H. is not entitled to get temporary injunction to restrain J.D. No. 1 and 2 from obstructing his possession over suit property. Hence, this application is liable to be rejected. Therefore, I pass this order.

ORDER

This application is hereby rejected with costs.

sd/-

(Smt. S.N. Morwale)

Civil Judge Senior Division
(Corporation Court), Aurangabad.

Date :-16-01-2024

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 the Stenographer : R.S. Chaudhari, Stenographer (Grade-I)
Court : C.J.S.D. (Corporation Court), Aurangabad.
Date : 16.01.2024
Order signed by the
presiding officer on : 16.01.2024
Order uploaded on : 16.01.2024