

R.C.S. No. 38/2018

Pravin Vs. Anita & ors.

CNR No.MHJN09-000270-2018

ORDER BELOW EXH. 34

This is an application filed by plaintiff for granting ad-interim relief. It is submitted that, he has filed the present suit in the summer vacation as there was an urgency. He has filed an application below Exh.5 with his affidavit and thereby prayed to restrain the defendants from alienating the suit property. He further submitted that, defendant No.4, by taking undue advantage of the situation may transfer 60 Gunthas to third party and cause disturbance and obstacles to the possession of the property in Gat No.19 and 25. He further contended that, the suit property in Gat No.25 to the extent of its whole area is in his possession and cultivation. Therefore, he has prayed to pass such necessary orders for protecting his interest and possession over the suit property.

2] Defendant Nos.1 to 3 and 5 have filed it say at the overleaf of the application and prayed to pass necessary orders. Defendant No.4 has resisted the application by filing his say. He submitted that, plaintiff has no locus standi to file the suit and present application. The application is not supported by an affidavit. Moreover, affidavits of adjoining owners have not been filed to show that, who is in actual possession of the suit property. He has purchased the suit property from co-sharers. The plaintiff alongwith co-sharers intentionally have involved him in the suit. They are in collusion with each others. Hence, on these grounds he has prayed to reject the application.

3] Heard Ld. Advocates for respective parties. Perused record. Present suit is filed for partition, separate possession and perpetual injunction. Record reveals that, plaintiff has filed an application below Exh.5 for ex parte ad-interim relief. On 25.5.2018, this Court has passed order below Exh. 5 to issue notice to defendants and the prayer of the plaintiff for granting ex parte ad-interim relief without giving opportunity of hearing to defendants, was rejected. Thereafter, on previous date i.e. 11.6.2018 defendant Nos.3 and 5 have appeared through their Advocate and the Ld. Advocate for defendant Nos.1 and 2 has filed appearance Pursis (Exh.25). On the same day, defendant No.4 has appeared through his Advocate. All defendants sought time to file their say and written statement which was granted. On the same day, plaintiff had moved an application (Exh.26) for directing the parties to maintain status-quo, which was rejected.

3] Today, defendants have filed applications seeking time to file their respective say and written statement as this is second date after appearance of defendants, time to file say and written statement is granted. As per order passed below Exh.5 this Court has rejected the prayer for ex-parte ad-interim injunction on the ground that, the relief cannot be granted without giving an opportunity of hearing to defendants. Today this Court has granted time to file say and W.S. to defendants.

4] By the present application, plaintiff is claiming to be in possession over the entire Gat No.25. Whereas, 7/12 extract shows the name of defendant No.4 to the extent of 60 R. Therefore, facts in this regard are not clear in absence of say and written statement of defendants. Hence, considering these facts and circumstances, I do not think it proper to consider the prayer of the plaintiff. Hence, for these reasons, following order is passed :

ORDER

Application (Exh. 34) stands rejected.

Date : 19/06/2018.

Sd/-
(S. D. Kamalakar)
Joint Civil Judge (J.D.)
Badnapur.