



REGULAR CIVIL SUIT No. 18 / 2020
Ashok Kadge and oth. Vs. Bapu Kadge and ano.
Common Order on Exh. 94 and 101

Vide both the applications, plaintiffs have submitted that defendants are obstructing conveying the sugarcane crop from the alleged road which is subject matter of the suit. It is also further contention of plaintiffs that sugarcane factory is likely to shut down its season very soon, and therefore plaintiffs will suffer irreparable loss if the sugarcane crop of plaintiffs is not conveyed to the factory. Accordingly, plaintiffs are requesting for police protection to convey sugarcane crop from his land through the road.

02. Say of defendants is at Exh. 102. According to them, initially, plaintiffs moved similar sort of application at Exh. 23 which was rejected by the court. The suit itself is barred by the provisions of Section 11 of Code of Civil Procedure, and subsequent suit on the earlier decision is not maintainable. The contentions in the application are false and frivolous. Plaintiffs have already conveyed the sugarcane crop to the factory, therefore this application is baseless and without any substance. They accordingly requested for rejecting both the applications.

03. Heard learned advocates for both the sides for a considerable length. Perused applications and say. Also perused record and proceeding.

04. At the outset, it is required to mention that although an application at Exh. 23 was moved by plaintiffs for police aid and it was rejected, it is seen from record that the same was for the purpose of enforcing ad-interim ex-parte injunction and not for the

purpose involved in both these applications. Thus, on that count, I am of the view that the version of defendants is not according to the facts involved in both these applications.

05. It is further seen from the documents at Exh. 100/1 and Exh. 116/1 that the sugarcane crop of plaintiff No. 1 Ashok is standing in his lands Gut No. 965, 931 and 934, and concerned factory has issued his letter for cutting of sugarcane crop. Considering the same, I am of the view that version of defendants again is not based on the factual matrices.

06. Without touching the merits of the matter, it can be seen that there is a dispute between the parties regarding the road towards the lands of plaintiffs. It is the contention of defendants that there is absolutely no road as such in existence ; *per contra* it is the version of plaintiffs that such road is in existence and defendants are obstructing plaintiffs from use of such road. Come what may, at this juncture, the urgency involved in the matter is the suger factory is closing its season approximately by the end of 15th March 2023, and plaintiffs will suffer irreparable loss if the sugarcane crop of plaintiffs is not conveyed to the factory.

07. As per plaint paragraph No. 1-A to 1-C, all the three suit properties are the common roads meant for the purpose of conveyance. However, it is worth mentioning that plaintiffs have neither given its boundaries of any of the roads nor filed any map alongwith plaint showing its existence. As such, it is clearly seen that plaintiffs have not complied with provisions of Order VII Rule 3 of Code of Civil Procedure, at the relevant stage. However, subsequently, plaintiffs have filed on record rough sketch map of the their lands as well as that of defendants at Exh. 73/1, and the same is being referred to for the sake of both these applications.

08. As discussed, it is the version of defendants that there is absolutely no road as contended by plaintiffs. Continuing the same, it is vehemently argued by learned advocate for defendants that if such police protection is given, plaintiffs will carve out new road under the garb of such police protection, which will be against the interest of defendants. Definitely, this point raised has substance in it, and said apprehension of defendants cannot be turned down, particularly from the numerous decades long litigations between the parties. However, it also cannot be overlooked that if the application is rejected, the same will cause immediate irreparable loss to plaintiffs, whereas at this juncture there is no such loss to the defendants. Insofar as apprehension of defendants is concerned, their interests can be protected by passing conditional order.

09. Thus, considering all the abovesaid, and most importantly without touching the merits, I am of the view that applications can be allowed by imposing certain conditions on plaintiffs. At the same time, it is hereby made clear that this order shall not be construed that existence of road as alleged by plaintiffs is recognized by this court. Accordingly, following order.

ORDER

- 1- Both the applications are allowed.
- 2- Issue directions to concerned PSO to provide adequate police protection to the plaintiff, only for the purpose of conveying the sugarcane crop from the lands Gut No. 931 admeasuring 46-R and Gut No. 965 admeasuring 2-H 04-R, of plaintiffs.
- 3- Plaintiffs are directed to borne necessary expenses incurred for police protection, and submit it details alongwith receipts etc. on affidavit.

- 4- Plaintiffs are further directed to deposit security deposit of Rs. 10,000/- (Rs. Ten Thousand only) in the Court as condition precedent.
- 5- Plaintiffs are also directed to take precaution not to disturb any adjacent land owner or any of defendants while conveying the sugarcane crop.
- 6- Plaintiffs are also further directed to make video shooting of entire activity of conveying sugarcane crop, and submit it to the court within 7 days of conveying the sugarcane crop.
- 7- Original order be kept below Exh. 101.

Jaysingpur
Dt. 09.03.2023

(Anand D. Karbhajan)
Jt. Civil Judge (Junior Division),
Jaysingpur, Tq. Shirol, Dist. Kolhapur