



Saraswati Hazare & Ors.
//Vs//
Subhash Shiledar.

ORDER ON EXHIBIT NO. 145

Through this application defendant has prayed to vacate the order passed below Exh.100 on dated 16/01/2023, by this Court and also prayed to expedite the suit. It is argument of Ld. Advocate Shri. S.B.Chothe that, plaintiff has taken interim injunction order against the defendant to mislead the Court therefore, this application has moved to vacate the said order vide provision of Order 39, Rule 4 of the CPC. On the other side the plaintiffs have strongly opposed to this application and filed their say vide Exh.146. It is stated in say that, this Court has decided an application vide Exh.100 on merit on dated 16/01/2023 against the defendant. Through this order, defendant has temporarily restrained from construction over the suit property till the final disposal of the suit. Defendant has challenged the impugned order before the Hon'ble District Court through filing Civil Appeal No.6/2023. It has been rejected by the District Court. Defendant has not challenged the said order to Hon'ble High Court till today, therefore, the order passed on Exh.100 is still intact. The Ld. Advocate of plaintiff Smt. J.T.Valatkar argued that, the prayer of vacate the order passed below Exh.100 is not maintainable. Therefore, prayed for rejection. She further argued that, the alternate prayer of expedite trial of the suit then plaintiffs are always ready for that, hence, prayed to partly allow the application.

02. After gone through the entire record. It shows that, present suit is filed for partition, declaration and perpetual injunction

against the defendant. Plaintiffs and defendant are siblings. In present suit defendant has filed his W.S. vide Exh.12 on record. Issues vide Exh.39 has been framed on 26/09/2014. Before framing of issues, an application of interim injunction vide Exh.5 had been rejected on 02/12/2014. Roznama shows that, on 28/04/2016, plaintiff has filed her Chief-Evidence-Affidavit on record and matter was posted for cross-examination. Meantime, plaintiff had filed an application for interim injunction vide Exh.74 on record. On 01/08/2022, it was not pressed by the plaintiff. Subsequently, on 12/12/2022, plaintiff has been filed again an application under Order 39, Rule 1 and 2 of CPC, i.e. Exh.100. Initially, ad-interim ex-parte injunction was granted and after given fair opportunity to defendant it was decided on merit. It is pertinent to note that, the aforesaid application was decided on merit. Therefore, the argument of Ld. Advocate of defendant in respect of this application that, Court was misled and said order was obtained by the plaintiff is sound not just and proper, because after perusal of order passed below Exh.100, it shows that, my predecessor has minutely gone the arguments and each and every contents of their applications than after he has passed detailed order below Exh.100 on dated 16/01/2023. That order was subsequently challenged by the defendant before the Hon'ble District Court by moving Civil Misc. Appeal No.6/2023. Which has been rejected. Now, through this application, defendant wants to vacate the order passed below Exh.100 on the ground that, said order is obtained by misled the Court, but actual fact is that, above said order has been passed after given ample opportunity of both sides. This application is not maintainable before this Court because, first appeal is already rejected against that order and if, defendant really wants to vacate the said order than he has only way to move second

appeal. But, that option is also closed because, the limitation to challenge the said order is over. Hence, the prayer of vacate the order passed below Exh.100 is not at all maintainable before the Court. Therefore, this prayer is liable for rejection. The another prayer of defendant is to expedite the suit. Other side has no objection because plaintiffs themselves want to expedite the trial. Therefore, considering the age of suit it would be just and proper to expedite the trial and disposed the suit according to law. Hence, in view of above discussion I inclined to pass following order.

-: ORDER :-

01. Application is partly allowed.
02. The prayer to vacate the order passed below Exh.100 is hereby rejected.
03. Both parties are directed to expedite the trial of the suit on day to day basis.

(Dictated and pronounced in open Court)

Gadhinglaj.
Date: 30/06/2025.

(S. D. Mehta)
Jt. Civil Judge, Junior Division,
Gadhinglaj.

:: CERTIFICATE ::

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

Name of stenographer	R. D. Patil.
Name of Court	S. D. Mehta, Jt. CJJD & JMFC, Gadhinglaj.
Date of Dictation	30/06/2025
Order signed by P.O. on	30/06/2025
Order uploaded on	30/06/2025