

R.C.S. No. 49/2020.
Vithoba Vs. Mhankali & Ors.
MHKO150003882020.

ORDER BELOW EXH. 71

Plaintiff has filed this application and claiming deposited amount of Rs. 34,367/-. It is contention of plaintiff that, as per his prayer vide application at Exh.21, this court has appointed court commissioner and supply sugar-cane crop from the suit property to Athani Sugar Mill, Bhudargad. However, the payment of supply sugar-cane deposited in court by concern court commissioner in the court vide C-8 Register No.3/0774466. Further, he has claimed said amount after final order of interim application filed at Exh.5.

2. The Hon'ble Appellate Court, Gadhinglaj in M. C. A. No.7/2022 allowed his application and restrained defendants from obstructing his possession over suit property. Hon'ble Appellate Court accepted his possession over suit property. The said order is finalized and therefore, he prayed to allow this application.

3. Defendants endorsed their say back-leaf of the application and strongly opposed. They contended that, defendant no.3 & 4 have filed Writ Petition against the order passed in M. C. A. No.7/2022. They have filed copy of order passed in Writ Petition No.9009/2023 on record. They contended that, the dispute between plaintiff and defendants in respect of boundary mark will be decided after trial. Thus, present application is not maintainable at this stage. Hence, prayed to reject.

4. I have heard counsels for both sides at considerable length. Herein, pertinent to note that, the amount of Rs. 34,367/- deposited in court as per the commissioner report is not disputed. The only question remains before this court whether plaintiffs are entitled for the said amount or not. On perusing order below Exh.21 it shows that, nowhere therein this court has directed to paid deposited amount to the plaintiff. Further, as per the order of Hon'ble High Court in Writ Petition No.9009/2023, arguable case is made out by these defendants. Further, yet said Writ Petition is not finally decided. Therefore, it could not be conclude that, order passed by First Appellate Court in M. C. A. No.7/2022 is final.

5. As per pleading of both parties, they have claimed their possession over suit property. Therefore, at this stage it is not just and proper to paid deposited amount to plaintiff only. The party in possession will be proved after final hearing of the case. In such condition, it could not presume that, plaintiff is in possession of suit property and allowed this application. Hence, considering above discussion present application is premature and devoid merit. Thus, I pass following order,

ORDER

1. Application stands rejected.
2. Cost in cause.
3. Parties to take note.

Place- Ajara.
Date- 28.01.2025.

(R. P. Thore)
J.O.Code No.MH02897
Civil Judge, Junior Division,
Ajara.