

**Order passed below Exh.5.**

(Dated 22-11-2016)

1           The appellant filed R.C.A.No.329/2012 against the judgment and decree passed by 9<sup>th</sup> Jt. Civil Judge, Junior Division, Latur in R.C.S. No.275/2012 dated 26-07-2012. The appellant alongwith appeal filed exh.5 for temporary injunction under Order 39, Rule I & II read with section 151 of the Code of Civil Procedure. Appellant submitted that he is the owner and possessor of land Gat No. 145 admeasuring 89-R which is situated at village Khulgapur, Tq. & Dist. Latur. Respondent is the western side land holder of its Gat No.153, between both the lands north-south direction there is common boundary (Dhura) and there is a flow of rain water. Due to which some land of the appellant is not in a position to cultivate. Therefore near about 10 gunthas land of appellant is barren land. On 24-06-2008 appellant measured his land through T.I.L.R. and fixed boundary marks of four corner of the land. After the measurement appellant requested to the respondent about digging the Stream, but respondent refused to do so. Therefore appellant himself dug the Stream by JCB Machine and completed stream on 15-06-2009. After the stream there is two feet land in width remain from western side. Therefore respondent no way concern with the stream, but respondent, his father and other family members are trying to

encroach over the suit land. Therefore appellant filed R.C.S.No.275/2009 for declaration of ownership with perpetual injunction. It is also the case of the appellant that his well is at a distance of 10-feet from common boundary. The water of rain fall is going in the well from western side, therefore well of appellant is damaged and is in danger. Therefore appellant filed temporary injunction application Exh.5 against the respondent on 31-08-2012.

2. Per contra, respondent filed his say at Exh.16 and resisted the application filed by the applicant below Exh.5. He denied all the contentions of the appellant. He submitted that appellant illegally destructed common bandh in the land of respondent on 15-06-2009. On 16-07-2009 defendant and plaintiff measured the land and in that measurement revealed that appellant encroached over 02-R portion of the land of respondent. Therefore appellant has not come in the court with clean hands. Therefore respondent prayed for rejection of the temporary injunction application.

3. I heard both the side.

4. Considering contents of application Exh.5 and say filed by respondent at Exh.16 it appears that application filed by the defendant for temporary injunction on 31-08-2012 and say

filed by the respondent on 19-06-2013. Since 31-08-2012 Exh.5 is pending and appellant has not taken any steps, therefore conduct of appellant itself shows that there is no necessity to grant temporary injunction. It is pertinent to note that suit filed by the appellant in the year 2009 and it was proceeded till 2012 and after full-fledged hearing learned trial court dismissed the suit against the appellant. Prima-facie no any documentary evidence against the respondent. Prima facie appellant has not brought on record any balance of convenience, irreparable loss is not in the favour of appellant. Prima facie no case made out for temporary injunction. In view of above discussion, I am of the view that expedite hearing of the appeal will be suffice purpose of the appeal. Hence appellant is liberty to take necessary steps for expedite hearing. I have already discussed that prima facie no case made in favour of the appellant. Therefore in the interest of justice I pass following order.

### **Order**

- 1            Application Exh.5 for temporary injunction is rejected.
- 2            No order as to costs.

Dated : 22-11-2016.

( M. H. Pathan )  
District Judge-6, Latur.

