

**ORDER BELOW EXH.84
(In RCS No.386/2013)**

01. This is an application filed by the plaintiffs under Section 151 of the Code of Civil Procedure praying for police protection. It is contended that the plaintiffs have instituted the suit in respect of Gat No.241 situated at village Shivni Tq.Ausa Dist.Latur Adm.1 H.84 R and on 25.07.2013 this court allowed the interim injunction application which is yet in force. However, the defendants interfering in the possession inspite of injunction order therefore, plaintiffs have filed police complaint. Now rainy season is started and they have apprehension that the defendants will obstruct them from cultivating the land. Therefore, they prayed for police protection.

02. This application is resisted by the defendants by filing say below Exh.88. They have admitted that this court granted interim injunction order. However, they approached to Appellate court and file appeal, it is pending. The plaintiffs on the basis of money power trying to dispossess the defendants, the defendants also filed RCS No.350/2010 for declaration of ownership. The plaintiffs without any concerned trying to dispossess the defendants, filed false police complaint and taking undue advantage of order passed by this court. The defendants are residing in suit property by constructing house over it. The defendants have already prepared for sowing of this year. They have also sown crop in the land and the plaintiffs is misusing the

order and trying to dispossess the defendants under the pretext of police protection. Hence they prayed for rejection of the application.

03. Perused the application, say, gone through the record and find that this court on 5.10.2013 passed order below Exh.5 and granted temporary injunction against the defendants excluding shed area describing in para No.1 of the plaint. Thus it is clear that the injunction order is not granted against the shed which is claimed to be encroached area of the defendants. However, for remaining land injunction order is granted. It is also clear that the defendants have prepared appeal against the order and appeal is pending. However, there is no stay as on today in this appeal. The learned counsel for the defendants while arguing the matter informed this court that 15th of this month appellate court is going to pass order on stay application however, today neither defendants nor their counsel present in the court. On the contrary the counsel for the plaintiffs informed that no order is passed in appeal and matter is adjourned further. According to the learned counsel for plaintiffs, the plaintiffs institution had purchased the suit land in 1976, and with the permission of Charity Commissioner, some area was sold. Defendant Ratan was cultivating the land for plaintiffs, he was removed latteron. However, this defendant Ratan filed suit which was dismissed again he filed another suit for declaration which is pending. Through plaintiff No.2 land is being cultivated by plaintiff No.1,

defendant Ratan erected shed, therefore, plaintiffs have filed suit for mandatory injunction, Exh.5 application is allowed to the extent of open area still the defendants obstructed. Therefore, police complaint was filed and plaintiffs have strong apprehension that the defendants will obstruct while cultivating the land, therefore, police protection is necessary. He placed reliance of case laws reported in **Shrimati Ratnabai w/o Narayanrao Naik and another Vs. Shri Satwarao s/o Narayanrao Naik in AIR 1995 BOMBAY 61 and Smt.Nirabai J.Patel Vs. Narayan D.Patil in 2004(1) ALL MR 657**. As against this the learned counsel for the defendants submitted that case laws relied upon by the plaintiffs are not applicable. There is no possession of the plaintiffs. The defendants are in possession of entire land from 1967, against temporary injunction order appeal is filed. The plaintiffs cannot use the provisions of Section 151 of the Code of Civil Procedure. There is no situations available in present case to exhaust this remedy and police protection cannot be granted to implement interim order. He placed reliance of case laws reported in **A.Abdul Rahim and another vs. Nazarullah and another in AIR 1999 KERALA 3, Kochupennu Ambujakshi and others Vs. Veluthkunju Vasu Channar and others in AIR 1993 KERALA 62** and prayed for rejection of the application.

04. After considering the arguments of both the learned counsel and case laws relied upon in respect of their respective claims, I find that this court granted temporary injunction against

the defendants after considering the prima facie case, balance of convenience and irreparable loss. Ofcourse to the extent of shed injunction order is not granted. However, for remaining area injunction is granted by this court after hearing both side. Appeal filed by defendants against that order is still pending, there is no stay order from appellate court. In this circumstances now rainy season is started the plaintiffs to cultivate the land, it is clear from the say of the defendants that plaintiffs have filed police complaint regarding interference and obstruction. Though the defendants claimed it is at false complaint still prima face it can be seen that plaintiffs had lodged police complaint against the defendants. Whether temporary injunction order can be inforce through police protection or not, this aspect is required to be considered.

05. The Hon'ble Bombay High Court in Shrimati Ratnabai's case held that order for temporary injunction against the defendants granted and for protection of possession the police help can be given, under inherent powers of civil court under section 151 of the Code of Civil Procedure. In Smt.Nirabai Patil's case it was held that for execution of order, decree police help can be granted subject to satisfaction of the court and the grave situations warranting exercise of said power must be existed. Both these case laws are clear on the point of grant of police protection for execution of decree or order, therefore, there remains no doubt that under section 151 of the Code of Civil Procedure police protection can be granted for execution of order and protection of

possession. Whereas the case laws relied upon by the defendants, A.Abdul Rahim case, it was held that defendants was not granted time to submit from objection, there was no pleading of violance of order and putting up of bondary was not the order of court. Therefore, police protection granted was held improper. In present case the plaintiffs has made complaint of breach of injunction order, police complaint came to be lodged, the defendants is granted full and fair opportunity to file their objection. Here the plaintiffs are not seeking police protection for putting up of boundary therefore, this case law is not applicble in the present case. In **Kochupennu cases** it was held that under article 226 of the Constitution of India police assistance canbe sought only on failure of party in getting such assistance in pursuance of order of civil court and only final order passed under Order-39 Rule-1 and 2 of the Code of Civil Procedure can be enforce with assistance of police and not interim exparte order. This case law is not applicable in the present facts and circumstances because order dtd.5.10.2013 is passed after hearing of both side it is final one under Order-39 Rule-1 of the Code of Civil Procedure. Therefore, police protection can be granted. I find that inspite of injunction order the defendants tried to disturb the possession of plaintiffs over remaining area and the plaintiffs is educational Institution. Therefore, circumstances warrants the exercise of under Section 151 of the Code of Civil Procedure. I therefore, convinced and satisfied that police protection is necessary. Hence the following order.

ORDER

1. The application is allowed.
2. The police protection is granted to the plaintiffs excluding the area of shed as granted in order below Exh.5.
3. On payment of necessary charges and fees police protection is granted to the plaintiffs for cultivation of the land.

Date:16/07/2014

(K.R.Deshpande)
Civil Judge Junior Division
Ausa.