

ORDER BELOW EXH.27 IN CIVIL M.A.No.146/2013

Non-applicant No.1 has made the present application to dismiss the original application of the applicant.

2] He further contended that, original suit bearing No.266/12 is decided by this Hon'ble Court on 30/12/15. An appeal filed by the opponents/defendants in this District Court is allowed, setting aside judgment and decree of this Hon'ble Court. However, the matter of measurement of the parties lands, the suit is remitted back to this Hon'ble Court and is pending for denovo enquiry. As the decree of this Hon'ble Court is set aside the present matter does not survive and liable to be rejected. Thus, Non-applicant No.1 prayed to dismiss the original application.

3] The applicant has filed the detailed say and opposed the present application on the ground that the applicant has preferred second appeal against the judgment and decree of the District Court and the same is for admission. Thus, prayed to reject the present application.

4] Perused the present application, say of the original application and documents.

5] Heard both sides at length.

6] The applicant has made the original application for the breach of interim exparty injunction ordered in RCS No.266/2012. The applicant has produced the order below Exh.5 dated 17-08-2012.

7] It is pertinent to note that, in RCS No.266/2012

an ad- interim exparty injunction was granted and thereby the defendants were prevented from disturbing the applicant's possession over the suit property bearing Gat No.281, adm.4H 47R situated at Sangvi Kati, Tq. Tuljapur.

8] The applicant has alleged that, the said ad-interim exparty injunction had been continued during the trial. He further contended that, during the existence of the said exparty injunction, the defendants obstructed the plaintiff's possession over the suit property and thus, he has filed the present application as per provision of Order 39 Rule 2(A) of Code of Civil Procedure.

9] The Non-applicant has produced the judgments of RCS No.266/2012, RCA No.21/2016, RCS No.857/2013.

10] On perusal of above mentioned judgments, it is evident that, RCS No.266/2012 decided on 30/12/2015. Moreover, the appeal preferred against the judgment of RCS No.266/2012 was also decided on 07/04/2016. In the said judgment of appeal, the decision of trial Court has been set aside and the matter has been remanded back to trial Court.

11] The dates of decisions are very crucial to decide the present application. Just because the applicant alleged that, the defendant i.e. Non-applicant obstructed the plaintiff's possession on 16/11/2013 and the RCS No.266/2012 and Regular Civil Appeal No.21/2016 decided on 30/12/2015 and 07/04/2016 respectively.

12] As per Order 39 Rule 2A of the Code of Civil

Procedure in the case of disobedience of any injunction granted or made under Rule 1 or 2 or breach of any of the terms on which the injunction of granted or made, the Court granting the injunction or making the order may order the property of person guilty of disobedience or breach to the attached and may also to be detained in civil prison.

13] Considering the above discussion, it is prima facie brought on record that the alleged breach of exparty injunction was committed prior to the decision of RCA No.21/2016. Therefore, the application under Order 39 Rule 2 A of C.P.C. is tenable. In these backdrops, the application of Non-applicant No.1 deserve to be dismissed with costs. Hence, I proceed to pass the following order;

ORDER

The application of non-applicant No.1 at Exhibit 27 is hereby rejected with costs of Rs.500/- be paid to the TLSC, Tuljapur within 15 days.

Date : 03/10/2024.

(M.M. Nikam,)
Civil Judge J. D.Tuljapur.

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	--	Smt. K.P.Pawekar
Court	--	CJJD & JMFC Tuljapur
Date	--	03-10-2024
Order signed by the Presiding Officer on	--	03-10-2024
Order uploaded on	--	03-10-2024