

Order below Exh.18 in Spl. C. S. No. 3/2023 in the matter of

Adityaraj Deshmukh Vs. Sudarshan Patil

CNR No. MHOS12000007-2023

1. The apprehension of plaintiffs that they would not be able to recover the fruits of decree that would be passed in their favour is the basis of present application filed under Order 38 Rule 5 of C.P.C. for attachment before judgment.
2. Suit is filed for compensation of Rs.9,00,000/- along with interest thereon on the ground of loss caused by defendants by obstructing plaintiffs right of use of way over the Bandha resulting in the loss of revenue of plaintiffs agricultural operations. Plaintiffs came to know that, defendants are in the process of alienating their suit lands gat number 287/A and gat no.289. Resultantly, present application moved for attachment of above said properties of defendants.
3. Defendants resisted this application on ground that, interim injunction application moved by plaintiffs has been rejected. Present application filed only to prolong the matter. Defendants having various landed properties. Defendants would not transfer their lands till disposal of present suit. Accordingly, it is prayed to reject the application.
4. Plaintiffs argued in line with contents of their application. Defendants not argued despite giving sufficient opportunity.
5. Provisions of Order 38 Rule 5 of C.P.C. aims to protect the plaintiff when he satisfies the court that, there is intention of the defendant to obstruct or delay the execution of any decree that may be passed against him and with this intention he is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court.
6. In case in hand, though plaintiff on affidavit deposed that, intentionally defendants are about to dispose of their agricultural

lands with intention to cause loss to the plaintiff in recovery of compensation of Rs.9,00,000/- however, with list exhibit 21 plaintiffs themselves have filed certified copies of 7/12 extract of some other landed properties of defendants i.e. gat no.245 and gat no.290 which are not the subject matter of present application. This thing goes to prima-facie show that, had the intention of defendants been to obstruct or delay the execution of decree then plaintiff would have under apprehension that defendants are in the process of alienating or disposing of their entire landed properties including gat no.245 and 290 which are not subject matter of present application. Another important aspect is that, plaintiff ought to have disclosed some particulars in his affidavit regarding basis of his knowledge that defendants intending to dispose of their properties. However, in the present application and supporting affidavit, the plaintiffs have not deposed any foundation of their knowledge. Affidavit is silent as to how and from whom plaintiffs have got knowledge that defendants are in the process of alienating their properties? On the other hand, Roznama reveals that, after filing say to the present application, the plaintiffs took 6 dates to argue on the present application. Had the information/knowledge of the plaintiff regarding intention of defendants been concrete then plaintiffs would have shown urgency in arguing the present application. Another important aspect is that, already plaintiffs have sought similar type of relief by way of exhibit 5 application which has been rejected with reasoning given in para no.12 of the order passed on exhibit 5. Considering all this discussion, I am of the view that, present application deserves to be rejected. Hence, the following order –

Order

1. Application is rejected.
2. Plaintiffs shall bear cost of present application.

Date – 05-12-2024

Place – Bhoom

(A. P. Kulkarni)

Jt. Civil Judge, S. D., Bhoom

CERTIFICATE

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

Name of Stenographer	---	Mr. A. K. Pawar, Sr. clerk
Court	---	Mr.A. P. Kulkarni Jt. Civil Judge, Senior Division, Bhoom, District - Osmanabad.
Date	---	05/12/2024
Order signed by the Presiding Officer on	---	05/12/2024
Order uploaded on	---	05/12/2024