

Order below Exh. No. 121

1. Present application has been filed by the defendants against the plaintiff for temporary injunction. Hereinafter, the defendants will be called as applicants and the plaintiff will be called as non-applicant. The applicants state that, the non-applicant has filed this suit for declaration and injunction in respect of suit land. The applicants have raised plea of tenancy and accordingly, issue of tenancy has been referred to Tenancy Court for its decision. The applicants state that, they were preferred Civil Revision Application No. 48/88 before the Hon'ble High Court. In that application, the Hon'ble High Court had passed an order of status quo and said application is pending before the Hon'ble High Court. The applicants state that, the revenue entries i.e. 7/12 extract, are in the name of non-applicant. He goes to take disadvantage of said entries and goes to alienate the suit land. The applicants state that, rights of the parties to the suit are not decided finally and if, the non-applicant alienate the suit land, the applicants will deprive their rights and there will be multiplicity of proceeding. The applicants state that, they have prima facie case, balance of convenience lies in their favour and if, injunction not granted, they will have to suffer irreparable loss. They prayed to allow the application.

2. The Non-applicant submitted his say (Exh. 127). He denied all the adverse allegations raised by the applicants against him. He states that, Civil Revision Application No. 48/88 was disposed of by The Hon'ble High Court. He had preferred Revision against the order of Deputy Collector, before M. R. T. Aurangabad. He states that, said revision is pending. He states that, the contention of the applicants are not correct that he is going to alienate the suit land. He states that, he is having fundamental right to acquire, possess and dispose of the property. The applicants have no right to restrain him. He states that, there is no prima facie case in favour of the applicants. Therefore, the application is liable to

be rejected.

3. Heard both the learned advocates for the respective parties. Following points have arise for my consideration and I have given findings thereon for the reasons stated thereunder:

S.No.	Points.	Findings.
1.	Whether the applicants have made out a prima-facie case in their favour?	: In negative.
2.	whether balance of convenience lies in favour of the applicants?	: In negative.
3.	Whether the applicants will suffer irreparable loss if the order of injunction is not granted ?	: In negative.
4.	What order?	: As per final order.

Reasons.

4. As to Points Nos. 1 to 3 :-

Heard both the learned advocates. Perused record of the suit. It goes to show that, the suit is for declaration of ownership and injunction in respect of suit land. It also appears from an order passed below Exh. 39 that, an issue in respect of tenancy was referred to Tenancy Court. It also appears from an order passed below Exh. 53 that, an order of injunction was granted in favour of the non-applicant. It also appears that, the applicants were preferred Misc. Civil Appeal before The Hon'ble District Court. It appears from order of Hon'ble District Court (Exh. 79) that, said appeal was dismissed. It also appears from the copy of order of Hon'ble High Court, in Civil Revision Application No. 48/88 (Exh. 81 and

82) that, said Revision was disposed of with a direction to the parties to maintain the order of status quo in between them till the disposal of the suit by this Court. So, from an order of The Hon'ble High Court, it is crystal clear that, parties to the suit are directed to maintain status quo in respect of suit land till the disposal of the suit by this Court. In this context, the application of applicants is taken into consideration.

5. As per order XXXIX Rule 1 (a) of Civil Procedure Code, temporary injunction may be granted to restrain the parties to suit, if any property in dispute in a suit is in danger or being wasted, damaged or alienated by any party to the suit. The applicants can claim relief only under above sub rule. In this context and so far as present facts and circumstances is concerned, the order of The Hon'ble High Court in Civil Revision Application No. 48/88 is important. The Hon'ble High Court has been already directed the parties to maintain status quo. In my opinion, above order is important and parties are under obligation to follow the same. Thus, there is no need to again direct the parties to do or not to do any act.

6. Apart from above, there is nothing on record to show that, the non-applicant is going to dispose of or alienate the suit land. Matter is already referred to Tenancy Court. The non-applicant himself had preferred a Revision before the M. R. T. Aurangabad. In such circumstances, it cannot be said that, the applicants have prima facie case in their favour. In view of order of The Hon'ble High Court, it cannot be said that, the applicants will have to suffer irreparable loss if this application cannot be allowed. Hence, the applicants are not entitled for temporary injunction. Hence, I answer point Nos. 1 to 3 in negative.

7. **As to point No. 4 :-**

In view of reasons given below point Nos. 1 to 3, I pass

following order.

ORDER.

- 1 The application is rejected.
- 2 No order as to cost.

Bhoom.
Dated:- 31/01/2014.

Sd/-
(Nilesh S. Budruk)
Civil Judge Junior Division,
Bhoom.

Certificate.

Certified that the contents of this PDF file are true and correct as per
the contents of original file.

(Pathan A.A.)
Steno (L.G), Bhoom.