

ORDER BELOW EXH. 149

1) Perused the application supported with affidavit and documents, say filed by defendant. Heard both parties.

2) It is contention of plaintiffs that they are owner and possessor of suit well. Plaintiffs have filed application for temporary injunction below Exh. 5 which has been allowed and defendant has been restrained from causing obstruction to plaintiffs peaceful usage of well water situated in the Gat no. 142. Defendant has filed counter-claim and also filed application for temporary injunction below Exh. 52 which has been rejected. Defendant inspite of temporary injunction order causing obstruction to plaintiffs usage of suit well and fixed electric motor and prayed for providing police aid for removal of electric motor and to implementation of temporary injunction order.

3) Defendant has been filed say and resisted application on the ground that plaintiff has filed application to misuse order passed against him. Plaintiff by using police protection try to dispossess defendants from using suit well. Plaintiffs have admitted in cross-examination that electric motor has been fixed by defendant in the year 2014. Plaintiffs are trying to dispossess defendants from usage of suit well and prayed for rejection of application.

4) Roznama and documents on record discloses that plaintiffs have filed application for temporary injunction against defendant which has been allowed and defendant has been restrained from causing obstruction to plaintiffs peaceful usage of well water situated in the Gat no. 142. Plaintiffs have also filed application to obtain police protection to implement order passed below Exh.5 on 30/05/2013 which has been allowed on 18/02/2015. Now also plaintiff claiming same relief with specific prayer the police protection be given to removal of electric motor, pipe and other material installed in the suit well. Defendant has filed copy of affidavit filed by plaintiffs in Civil Application no. 05/2014 below Exh, 32 and 33 on record, in which plaintiffs have deposed that defendant has installed electric motor in the suit well. Which prima facie discloses that defendant has obstructed plaintiffs usage of water in the suit well. Defendant has not brought on record that order passed against him has been reverted by Hon'ble District Court. If present application is not allowed then defendant would cause obstruction to plaintiffs peaceful usage of suit well and ultimately plaintiff would be helpless though the temporary injunction order passed in his favour.

A. Hon'ble Bombay High Court in Smt. Ratanbai Narayanrao Naik Vs. Shri. Satwarrao Naranyanrao Naik (1994 CJ (Bom) 508) held that, *“for application for grant of police aid, there need not be any actual resistance and such a help can be prayed for*

and such a procedure can be availed of at any time even when breach of peace is apprehended or anticipated. Police help is an aid to execution, not the execution by itself”.

B. Hon'ble Karnataka High Court in Papanna v. Nagachari and ors. reported in 1996 CJ (Kar) 476 at paragraph no. 8 laid down that “ *The mere fact that there is provision under O 39 R 2 a for taking action for disobedience of an order of temporary injunction, does not prevent the court from taking steps to see that its orders are implemented. If the court had no power to implement its own orders, then there is no purpose in the courts passing orders in matters coming before them. The remedy under O 39 R 2 a is not exhaustive and court can pass appropriate orders to see that its orders are enforced. In necessary cases, even the police can be directed to enforce the orders of the court.*”

5) In the present suit also if defendant caused obstruction of usage of water by installing electric motor in the well to the plaintiff then plaintiff would suffer heavy loss on the contrary no loss would be caused to the defendant. Hence, in the interest of justice application needs to be allowed to provide police aid to the plaintiff for removal of electric motor, pipe and etc. Hence, following order:-

ORDER

- 1) Application is allowed.
- 2) PSO Paranda police station is hereby directed to provide

two male and one lady constable to plaintiff on payment of necessary charges for protection at the time of removal of electric motor, pipe and other material installed in well situated in the Gat no. 142 at Lohara, Tal. Paranda and implementation of temporary injunction order passed in favour of the plaintiff.

Date:- 14/03/2019
Paranda

Sd/-
(S.P. Rachkar)
2nd Jt. Civil Judge, J.D. Paranda