

MHPA190003712023



Order below Exh. 35 in R. C. S. No. 39/2023
Rangnath Kundalikrao Surwase
V/s
Jagnnath Kundalikrao Surwase

1. This is an application filed by plaintiff under Section 151 of Civil Procedure Code, 1908 for restoration of possession of plaintiff over suit property and damages.
2. He has stated that he has filed this suit for perpetual injunction. This court has granted exparte ad interim temporary injunction restraining defendants, their agents, servants etc. from interfering plaintiff's peaceful possession over suit property vide order below Exh. 8 dated 16/6/2023. Despite full knowledge, with utter disregard and disobedience of the said order, defendants No. 1 & 2 have obstructed and prevented plaintiff from cultivating suit land through hired tractor and threatened tractor driver and plaintiff of dire consequences if they keep on cultivating suit land. Due to such obstruction by defendants, fearing that any untoward incident might take place, if plaintiff cultivates suit land, frightened plaintiff could gather courage and after few days, on 23/6/2023, the said incident was reported to Manwat Police Station and Non-Cognizable Case No. 213/2023 was registered against defendants No. 1 & 2. Suit land is the only source of income of plaintiff and his family. Fearing injury or death at the hands of defendants, plaintiff has filed application for police aid and it was allowed by the court before one year. However, till today, in spite of persuasion, police aid is not provided as per order of the court. Consequently, the suit land has fallen barren throughout last crop year. Plaintiff has filed separate application for contempt of court of order for police protection. Court has passed ad interim order initially. Subsequently application Exh. 5 for temporary injunction was allowed. Defendants have deliberately disobeyed and defied said orders and kept obstructing possession and cultivation of plaintiff over suit land throughout last crop year. Defendants have caused financial loss of income of Rs.2,00,000/- to be derived from cultivating entire suit land A to C & E and caused mental agony to poor plaintiff by depriving him from suit land which is his only source of income for his family. Defendants have deprived plaintiff from fruits of temporary injunction order by such obstruction. Plaintiff has also filed an application under Order 39 Rule 2A of C. P. C. against defendants and it is pending. On 15/4/2024, defendants have illegally taken possession of

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suit land. Defendants have intentionally committed serious breach and defiance of order of temporary injunction passed by the court on 12/10/2023, defendants are not allowing plaintiff to enter suit land A and plaintiff is going to seek for amendment in application filed under Order 39 Rule 2A of C.P.C. On these grounds, he has prayed to restore his possession over suit land A. As it is onset of monsoon, it is high time for cultivating and preparing lands for sowing in upcoming crop year, this application is required to be decided as early as possible in the interest of justice and possession of plaintiff is required to be restored regarding suit land A and defendants may be directed to give damages to tune of Rs. 2,00,000/- for loss of crop during last year due to obstruction caused by defendants to possession and cultivation of suit land while order of ad interim temporary injunction is in operation. If plaintiff's possession is not restored, order of temporary injunction passed after finding on merits in his favour would be redundant and meaningless. On these grounds, he has prayed to allow this application.

3. In spite of service of notice on defendant No. 1 on 10/6/2024, he has failed to file say to this application till 4/12/2024. Hence, it was ordered to be proceeded without say against defendant No. 1 vide order dated 4/12/2024.
4. Heard Learned Advocate R. P. Surwase for plaintiff. Perused record of the case.
5. Present suit is filed for perpetual injunction restraining defendants or their agents, servants or anybody acting through them from obstructing, interfering and disturbing plaintiff's possession over suit property A to C & E and recovery of possession of 1 Are land suit property D, which was illegally encroached upon and possessed by defendants. In spite of service of summons Exh. 10 on 9/6/2023, defendants No. 1 & 2 have failed to file written statement within stipulated time. Hence, case shall proceed against defendants without their written statement vide order dated 18/9/2023. Defendant No. 1 has filed copy of laboratory report of HIV Antibody Test of defendant No. 2 dated 13/6/2013 at Exh. 44/1, copy of Certificate of Vulnerable Diseases bearing No.C.H.P./DAPUC/845/2022 issued to defendant No. 2 by Senior Medical Officer, Civil Hospital, Parbhani on 5/11/2022 at Exh. 44/2, copy of Patient Booklet (Green Booklet) of defendant No. 2 issued on 14/6/2013 at Exh. 44/3. Plaintiff has filed his affidavit of examination-in-chief at Exh. 21 on 22/2/2024. No cross order passed against defendants on 28/3/2024. Plaintiff's witness Mujahid Khan Karim Khan Pathan has filed affidavit of examination in chief at Exh. 38 on 27/6/2024. No cross

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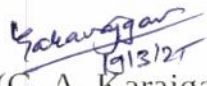
order passed against defendants on the same day. Plaintiff has filed evidence close pursis at Exh. 39 on 27/6/2024. The court has passed order below Exh. 14 on 21/7/2023 directing Police Inspector, Manwat Police Station, Manwat for implementation of order passed below Exh. 8 dated 16/6/2023. Defendants' evidence was closed vide order passed below Exh. 1 on 26/9/2024. Learned Advocate for plaintiff has relied upon the ratio laid down by Hon'ble Bombay High Court in the case of Mukta Alias Muktabai Aabasaheb Kale V/s Pandurang Tatyrao Kale & Another, Writ Petition No. 9049/2022 dated 8/2/2023, wherein it was held that respondents have disobeyed order of Trial Court below Exh. 5 dated 6/5/2021, the Trial Court is directed to decide the application under Order XXXIX Rule 2A for disobedience of the order within a period of four weeks from today, respondents are directed to handover the possession of the suit property within a period of weeks from today. In event any obstruction is being caused by the respondents, necessary police aid to be granted to the petitioner for taking possession of the suit property. Considering the facts in this case, it is useful to plaintiff in this case. Defendants have not denied the fact that plaintiff was dispossessed after passing order of temporary injunction on 15/4/2024. Therefore, I proceed to pass the following order:

ORDER

- 1) Application Exh. 35 is allowed.
- 2) Defendants shall hand over peaceful possession of suit property 22 Are out of Hector 3.8 Are in Gat No. 283 situated at Mangrul, Taluka Manwat, District Parbhani as described in prayer clause B within 2 weeks from the date of passing of this order.
- 3) Police protection shall be provided to plaintiff, if necessary, for implementation of this order.

Manwat

Date: 19/3/2025


(G. A. Karajgar)

ay Civil Judge Junior Division, Manwat