

ORDER BELOW EXHIBIT 129 IN RCS NO. 12/2014

(Passed on 21/04/2018)

The present application is moved by the plaintiff under order 39 Rule 1 and 2 of the code of Civil Procedure [hereinafter for short 'the C.P.C.'].

2] It is contended by the plaintiff that they have cultivated sugarcane crop in Gat No. 1282. It has ripen and ready for cutting. The plaintiff had applied to Bhimashankar Sugar Factory and Vignahar Sugar Factory for taking the sugarcane crop to the factory. Further, he had also made complaints to the superior authorities of the factory complaining that they are not reaping the sugarcane crop. But it was in vain. The plaintiff is a member farmer of Bhimashankar Sugar Factory. If the sugarcane is not taken by the Factory the plaintiff will suffer irreparable loss. Hence, it is prayed that Bhimashankar Sugar Factory be directed to take the sugarcane crop from the suit property i.e. Gat No. 1282. It is also contended that defendant No. 4 had supplied sugarcane from another suit property i.e. Gat No. 780 to Bhimashankar Sugar Factory and its payment is disbursed. Hence, it is prayed that defendant No. 4 be directed to deposit the said payment into the court.

3] Defendant No. 4 filed his say to the present application at Exhibit 132. It is contended by him that the application is baseless and not governed by any of the provisions of the C.P.C. The plaintiff has not mentioned any reason as to why the sugar factory did not take sugarcane from the plaintiff's field i.e. Gat No. 1282. Further, he

has no other source of income other than agriculture. His family members are dependent on him. He has paid off the debts and other dues out of the amount of ₹ 1,17,815/-. Hence, it is prayed that the application be rejected.

4] Heard. Perused the application and the Say.

5] The present suit is for partition and separate possession of the suit properties i.e. Gat No. 1282 and 780. In the present application, the plaintiff has prayed for direction to Bhimashankar Factory to take sugarcane crop from Gat No. 1282. The record and the documents filed in support of the application show that the plaintiff had made applications to both the factories and complaints to their superior authority. In my opinion, such a direction cannot be given because it is of such a nature which the court cannot continuously supervise. It is for the factory and the member farmers to decide what to do with the crops and that dispute is not the subject matter of the present suit. Further, it is pertinent to note that Bhimashankar Factory or Vignahar Factory are not party to the present suit. Why they have refused to take the sugarcane from the plaintiff's field is not answered by the plaintiff himself. Today the learned advocate for the plaintiff submitted that Bhimashankar Factory is now closed and directions be given to Vignahar Factory. However, as discussed above, I am of the opinion, that the present application cannot be allowed and such a direction cannot be given.

6] Further, in respect of the second prayer, it is pertinent to note that defendant No. 4 has received the payment already. The

plaintiff had moved an application (Exhibit 125) initially for directing the factory not to disburse the payment to defendant No. 4. To that application defendant No. 4 filed a pursis that the payment is already received. The prayer in the present application is an offshoot of the say filed by defendant No. 4. It is pertinent to note that defendant No. 4 has submitted in the say that at the end of trial, if there is a necessity to divide the amount received by him, he is ready to deposit the plaintiff's share in the court. In my opinion, in view of the above say, the plaintiff will not suffer any irreparable loss. There is nothing in the present prayer that cannot be compensated in terms of money. Therefore, the second limb of the prayer also fails.

7] In view of the above discussion, I am of the opinion that the application is liable to be rejected. Hence, the order-

ORDER

The application (Exhibit 129) is rejected.

Date : 21/04/2018
Place : Ghodegaon

Bhanupratap B Chouhan
Jt. Civil Judge Junior Division.