

Order Below Exhibit 19 in R.C.A. No.63/2017
(Rajakka Gavade Vs. Shivaji Gavade)

1. The appellants have filed this application for restraining the respondent from causing obstruction to their possession in the suit property A and obstructing them to send the sugarcane to the factory.

2. According to the appellants the appellants are in possession of the suit property. They have cultivated the crops and sugarcane in the suit property. The sugarcane in Gat No. 2010 admeasuring 46 R is ready for sending to the factory and the fud receipt has been issued in the name of appellant no. 1. The respondent is obstructing her from cutting the sugarcane and sending to sugar factory. Therefore, she prayed for restraining the respondent from causing obstruction to her possession in the suit property and sending the sugarcane to the sugarcane factory.

3. The respondent resisted the application by filing reply at Exh. 23 on the ground that as per the decree passed by Id. Trial court it is held that the respondent has 1/3 share in suit property along with appellant no. 2 and 3. The respondent is in common possession of suit property. The appellants are not in exclusive possession of the suit property. The appellants are trying to send the sugarcane to the sugar factory forcibly. The appellants have no right to claim injunction against respondent who is the co-sharer. Therefore, he prayed for rejection of the application.

4. I have heard Id. Counsel for the appellant and respondent. Id. Counsel for the appellant submitted that the appellants are in possession of the suit property and they have cultivated the crops. The possession of 1/3rd share of respondent has not been handed over to him. He is not in possession of the suit land, however he is obstructing the appellants to send sugarcane in Gat No. 2010 to sugar factory, therefore the respondent is required to be restrained by an order of injunction.

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5. Ld Counsel for the respondent has submitted that the ld. Trial court has already held that the respondent has 1/3rd share in suit property and he is in common possession of suit property. It is held that the appellant no. 1 has no share in suit property and she is not the legally wedded wife of Vitthal Gavade and injunction can not be granted against the co-sharer therefore he prayed for rejection of the application.

6. On perusal of Judgment and Decree passed by ld. Trial court it shows that the ld trial court has held that the plaintiff and defendant no. 2 and 3 have 1/3rd share each and they are in common possession of the suit property. All the appellants have challenged the decree. Appellant no. 2 and 3 are daughters of appellant no. 1. According to appellants they have cultivated the sugarcane in Gat No. 2010, however, the respondent is obstructing them to send the sugarcane to the sugar factory. The appellants have produced the receipt issued by the sugar factory in the name of appellant no. 1 in respect of Gat no. 2010. The respondent has not produced any documentary evidence to show that he has cultivated the sugarcane crop in Gat no. 2010 and his name has been recorded to the sugar factory. As the sugarcane crop is ready for sending to sugar factory, if the sugarcane crop is not send to the sugar factory immediately there is possibility of causing damage to the crop. After all as per the decree passed by ld. Trial court the respondent has 1/3rd share in suit property. The direction can be issued to withheld the 1/3rd bill amount of sugar cane crop till the decision of the appeal on merits. Therefore, considering the facts it is necessary to permit the appellants to send the sugarcane situated in Gat no. 2010 to the sugar factory, however, they shall not withdraw the 1/3rd amount of sugar cane amount till the decision of appeal. The said aspect will be decided at the time of final hearing of the appeal on merits.

7. The ld. Trial Court has held that the respondent has 1/3rd share and he is in common possession of suit property, injunction can not be granted against the co-sharer. Therefore in

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the facts and circumstances of the case it is necessary to direct the parties to maintain status quo in respect of possession of the suit property. Therefore, considering the facts and circumstances of the case, I proceed to pass the following order.

ORDER

1. The application is partly allowed.
2. The appellants are permitted to send the sugarcane situated in Gat no. 2010 to the sugar factory. They shall produce the copies of receipts in respect of sugarcane send to the factory from Gat No. 2010 and they shall not withdraw the 1/3rd amount of sugarcane bill which would be sent from Gat No. 2010.
3. Considering the facts parties are directed to maintain status quo in respect of possession of suit property till the decision of the appeal.

ISLAMPUR.

17 January, 2018

Sd/xx

(R.B.Rote)

District Judge-2, Islampur.