

**Order Below Exhibit 24 in R.C.A. No.63/2017**

(Rajakka Gavade Vs. Shivaji Gavade)

1. The respondent has filed this application for directions to attach the amount of sugarcane bill of the sugarcane sent by appellant no. 1 from suit land Gat No. 919/1 and Gat No. 2021 to Vishvasrao Naik Co-Operative Sugar Factory Ltd. Yashwantnagar, Tal. Shirala.

2. According to the respondent, as per the decree in RCS No. 259/2007 it is held that he and defendant no. 2 and 3 have 1/3 share each in the suit property. The appellant no. 1 has no concern with the suit property. However, the appellant no. 1 has forcibly sent the sugarcane in Gat No. 919/1 and Gat No. 2021 to Vishvasrao Naik Co-Operative Sugar Factory Ltd. Yashwantnagar, Tal. Shirala in her name during the period 07/12/2017 to 13/12/2017 by Tractor No. MH-19-AP-7918, weighing about 50 ton worth of Rs. 1,50,000/-. The appellant no. 1 is trying to withdraw the said sugarcane amount therefore the respondent prayed for attachment of sugarcane amount and depositing the said amount in court till the decision of appeal.

3. The appellants resisted the application by filling say Exh. 28 on the ground that RCS No. 75/2002 filed by the respondent has been dismissed. The T.I. has been rejected by the Hon'ble High Court in Writ Petition No. 9577/2004 on 16/11/2015. The respondent is not in possession of the suit land. The appellants are in possession of the suit land. They have cultivated the sugarcane in Gat No. 919/1 and the said sugarcane has been sent to Vishvasrao Naik Co-Operative Sugar Factory Ltd. Yashwantnagar, Tal. Shirala on 09/12/2017 weighing 9.375 ton. The respondent has falsely stated that 50 ton sugarcane has been sent illegally, therefore they prayed for rejection of the application.

4. Id. Counsel for the respondent has submitted that in the judgment and decree the Id. Trial court has held that the present respondent is having 1/3 share in suit property along with appellant no. 2 and 3. It is observed that the

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marriage of appellant no. 1 with Vitthal Santu Gavade is void and she is not the legally wedded wife of Vitthal Santu Gavade and no share has been given to appellant no. 1. Appellant no. 1 has no concern with the suit property, however she has sent the sugarcane in her name. The ld. Trial court has observed that the plaintiff and defendant no. 2 and 3 are in common possession of the suit property. The appellants have no right to send the entire sugarcane to the factory and obtain the whole amount. The respondent has 1/3 share in the suit property therefore it is necessary to attach the sugarcane bill and to deposit the bill amount in court.

5. Ld. Counsel for the appellant has submitted that the respondent had filed RCS No. 75/2002 for injunction. The said suit has been dismissed holding that the respondent is not in possession of the suit property. The sugarcane was cultivated by appellant no. 1. The appellant no. 2 and 3 are the daughters of appellant no. 1. The appellant no. 1 is ready to give surety. If the bill amount is attached the appellant no. 1 who has cultivated the sugarcane will suffer irreparable loss. Therefore, he prayed for the rejection of the application.

6. I have gone through the record of the case. The trial court has held that the plaintiff/respondent and defendant no. 2 and 3 i.e. appellant no. 2 and 3 have 1/3 share each in suit property. It has been observed that the appellant no. 1 is not the legally wedded wife of Vitthal Santu Gavade as the marriage was taken place during the lifetime of his first wife and no share has been given to appellant no. 1. The issue no. 2 has been answered in the affirmative in respect of plaintiff and defendant no. 2 and 3 and it has been held that plaintiff and defendant no. 2 and 3 are in common possession of suit property. The plaintiff has not asked for mesne profits. Perusal of the receipt produced by respondent it shows that 9.375 ton sugarcane has been sent in the name of appellant no. 1 from Gat No. 919/1. According to appellants they have cultivated the sugarcane. It has been held that appellant no. 2 and 3 have 1/3rd share each in suit property. The appeal will be decide on its own merit. The ld trial

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court has decided that the respondent has 1/3rd share in suit property and he is in common possession of suit property. Therefore, considering the facts, instead of attaching the entire bill amount of sugarcane bill, the purpose would be served if the sugarcane bill to the extent of disputed 1/3rd share is attached and directed to be deposited in court till the decision of the appeal. As appellant no. 2 to 3 are having 1/3rd share each in suit property and appellant no. 1 is their mother, the appellants are entitled to withdraw the sugarcane bill to the extent of 2/3rd share. 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 Managing Director, Vishvasrao Naik Co-Operative Sugar Factory Ltd. Yashwantnagar, Tal. Shirala is directed to deposit 1/3rd amount of the sugarcane bill of the sugarcane sent by the appellant no. 1 Rajakka Vitthal Gavade to the factory from Gat No. 919/1.
3. Issue letter to the concerned sugar factory accordingly.

ISLAMPUR.

17 January, 2018

Sd/-

( R.B.Rote)

District Judge-2, Islampur.