



ORDER PASSED BELOW EXH. No.21 IN R.C.S. No. 378/2022.

01. This is an application for temporary injunction under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 filed by the plaintiff to direct defendant not to cut sugarcane crops from the suit property i.e. land bearing gat no.1758 ad-measuring 0H.58R. situated at village Tambave Tal. Walwa, Dist.Sangli (here-in-after referred as 'suit property').

02. It is contention of the plaintiff that, she filed present suit for redemption of mortgage deed dated 21.04.2015 and for recovery of possession. She contended that, on 21.04.2015 she executed mortgage deed, in respect of suit property in favour of the defendant for seven years. Said mortgage deed is expired on 21.04.2022, hence, thereafter, she requested the defendant for possession of the suit property and for redemption of mortgage deed, but he denied. Hence, she filed present suit. After 21.04.2022 the defendant has no right over the suit property but then also he is in illegal possession of the suit property. The defendant is also trying to disposed off sugarcane crops from the suit property. But actually now, the defendant has no right over said sugarcane crops. Hence, she filed application for appointment of Court Commissioner in respect of sugarcane crops. But after filing the application the defendant intentionally cut 15 to 20 ton sugarcane crops from the suit property and sent it to the sugar factory. Hence, she filed present application to restrain the defendant from cutting the sugarcane crops.

03. The defendant resisted present application by filing his say at Exh.31. He contented that, after execution of mortgage deed, the plaintiff by way of oral agreement agreed to sell the suit property to him for total consideration amount of Rs.12,50,000/-. As per said oral agreement he also paid Rs.10,50,000/- to the plaintiff. Now, only to grab said amount the plaintiff filed present false suit against him. He further contended that, he is in possession of the suit property since 21.04.2015. He cultivated sugarcane crops in the suit property and for development of said crops he also spent lot of money. Therefore, he has every right over the sugarcane crops which are in the suit property. Hence, considering the above facts he sought for rejection of application.

04. On the basis of contentions of the plaintiff and defendant following points arise for my determination and I have recorded my findings thereon with reasons thereto as under :

No.	Points	Findings
1)	Whether the plaintiff prove that, she is having prima facie case in her favour?	In the negative.
2)	Whether the plaintiff prove that, balance of convenience lies in her favour?	In the negative.
3)	Whether the plaintiff prove that, she will suffer irreparable loss, if injunction is not granted?	In the negative.
4)	What order?	The application is rejected.

05. Heard learned counsels for both sides. Learned advocate for the plaintiff submitted that, after 21.04.2022 the defendant has no right over the suit property and sugarcane crops which are in the suit property. The plaintiff is the owner of the suit property therefore, she is having rights over the sugarcane crops. If said crops sold by the

defendant then plaintiff will suffer irreparable loss. Therefore, he submitted that, application be allowed.

06. On the other hand, learned advocate for the defendant submitted that, the defendant is in possession of the suit property since 21.04.2015. The defendant cultivated the sugarcane crops in the suit property and he has every right over the said crops. Therefore, he submitted that, application be rejected.

REASONS

As to point Nos. 01 to 03 :

07. In order to avoid repetition, these points are taken up together for discussion. Read contentions of the plaintiff and defendant. Also, perused the documents produced on record. Heard counsels for the plaintiff and the defendant.

08. The plaintiff filed the present application as per Order 39, Rule 1 and 2 of the Code of Civil Procedure. One cannot go into the details of the merit of the suit, while deciding the temporary injunction application. But, needless to say that, as the plaintiff knocked the door of the court and claimed equitable relief, burden lies on her to prove her case. As per law, it is necessary for the plaintiff to prove that, she is having *prima facie* case, balance of convenience lies in her favour and irreparable loss will cause to her, if injunction is not granted.

09. I have bestowed my thoughtful consideration to submissions advanced by the plaintiff and defendant. The plaintiff contended that, after 21.04.2022 the defendant has no right over the suit property. But it is admitted fact that, the defendant is in possession of the suit property since 21.04.2015. It is also admitted fact that, the defendant cultivated the sugarcane crops in the suit property and he also spent money for

development of said crops. Hence, considering said admitted facts prima facie it appears that, the defendant has right over the sugarcane crops which are cultivated in the suit property. But there is nothing on record filed by the plaintiff which shows that, she has right over the sugarcane crops which are cultivated by the defendant.

10. Apart, after considering the rival contentions of both sides it appears that, both parties are claiming their rights over the suit property. The ownership of the plaintiff is in dispute. If defendant is restrained from cutting the sugarcane crops, then he definitely will suffer irreparable loss. On the contrary if plaintiff will succeed the suit then she has right to claim *mesne profits*.

11. Grant of Temporary Injunction entail serious consequences on the party against whom it is issue. Therefore, it can not be lightly ordered unless the requisite conditions and circumstances are established by the person who seeks protection. In present case plaintiff prima facie failed to prove that, she has right over the sugarcane crops. In view of all above discussion I have no hesitation to hold that, the plaintiff failed to established all the requisite conditions which are necessary for granting temporary injunction. Hence, I record my finding to point Nos.01 to 03 in the negative and proceed to pass the following order.

ORDER

Application is hereby rejected.

Date: 04.01.2023.

(Kamaljeet M. Chandaliya)
6th Jt. Civil Judge, Jr. Division,
Islampur.