R.C.S. No.14/2015.

ORDER BELOW EXH.39.

The present application has been filed by the plaintiffs submitting that, the suit is filed for partition and perpetual prohibitory injunction. The application for interim relief that, the defendant No.1 shall not collect sugarcane bill from Kranti Karkhana is also filed. Application was filed at Exh.14 to direct Sugar Factory to deposit sugarcane bill in the Court. However, during pendency of said application the Sugar Factory has deducted its amount from the sugarcane bill and paid the remaining amount to the defendant No.1. The sugarcane was grown in the joint property of the plaintiffs and defendants. The defendant No.1 was aware about said fact. However, he has collected the amount of sugarcane bill in collusion with the factory.

02. In suit property Gat No.735 the defendant No.1 has 1H-30R area sugarcane crop in his name. Yet the crop is standing and there is likelihood of sending the same to the sugar factory in the name of defendant No.1. Hence, there is likelihood of the defendant No.1 collecting said sugarcane bill. Hence, the sugarcane factory may be directed to deposit the entire amount of sugarcane sent to the same from Gat No.735, in the Court. If the bill is not deposited in the Court, the plaintiff will suffer irreparable loss and it will cause prejudice to him. On the contrary if the application is allowed no prejudice will cause to the defendant No.1. In the suit rights of the parties will be determined. Hence, the application may be allowed.

03. The defendant No.1 has filed say at Exh.44 and resisted the application. In short it is his case that, after death of father of the plaintiff and defendant No.1 there was partition in the year 1999 regarding field property. 7/12 extract of Gat No.735 also reflects the same. Same is the position of Gat No.736/2. The present application is filed just to harass the defendant No.1. In the year 2012 the defendant No.1 with consent of the plaintiff has cultivated sugarcane crop in 1H-30R land. He had personally spent for the same. At that time the plaintiffs have not raised any objection. The said crop was sent to the factory. Thereafter the defendant No.1 has grown Khodva crop, documents regarding the same are produced on record. The application is filed just because the defendant No.1 has filed application before concerned authority regarding rent and share in income, in respect of beer-bar. The plaintiffs have not spent any money for growing sugarcane crop. Due to their business, it was not possible for them to cultivate the land. In Gat No.736, in 42 R area the plaintiffs have grown Soyabin and Wheat crop. The defendant No.1 has borrowed loan and spent more than Rs.2,00,000/-. He has also spent money for pipelines. The sugar factory has deducted the amount of loan borrowed from various Societies. Thus, the defendant No.1 has not received any money from the last sugarcane bill. As the properties of the parties are separate, there is no question of directing the concerned factory to deposit the amount in the Court. Hence, application may be rejected with compensatory cost.

04. Heard both the sides. Perused the record.

05. Record shows that, the suit is filed for partition by metes and bounds and for perpetual prohibitory injunction, restraining the defendant No.1 from collecting the amount of sugarcane bill. Learned counsel for the plaintiff argued that, theory of partition is not acceptable because, if there was partition, then the area from which the sugarcane crop was sent, is more than the alleged share of the defendant No.1. Further, if there is partition then there was no reason for the defendant No.1 to spend for pipeline for entire suit property. The property is joint family property and the defendant No.1 being elder brother, the sugarcane crop was sent in his name. However, the plaintiffs have also spent money for the same.

06. On the other hand learned counsel for the defendant No.1 argued that, there was partition and the suit property was given for cultivation by the plaintiffs, as it was not possible for them to personally cultivate. He has spent more than Rs.Two lakh. Hence, if he did not get money, then it will not be possible to repay the loan. Sugar Factory is not party to the proceeding, hence application may be rejected.

07. As discussed earlier the plaintiff has alleged that, the property is jointly hold by them and as per case of defendant, there was partition. It is pertinent to note that, under Muslim Law there is no concept of joint family or karta. Record shows that, father of the plaintiff and defendant No.1 expired in the year 1998. As per provisions of law, at that time the shares of the parties i.e. legal heirs become definite.

08. The plaintiff has not mentioned any specific provision under which the application is filed. However, from its nature, it becomes clear that, he wants to attach the property before judgment. As per Order XXXVIII Rule 5 of the Code of Civil Procedure, after satisfaction of the Court by affidavit or otherwise that with intent to obstruct or delay the execution of any decree that may be passed against him, the defendant is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, then only property can be attached.

09. Here, it is pertinent to note that, the plaintiff has not claimed relief of mense-profit or accounts. Both the parties have claimed their possession. The document produced by the defendant No.1 show that, he has spent money for cultivation of sugarcane crop. All those documents are for the period 2014-2015. Receipts prima-facie show that, sugarcane crop was sent in the name of defendant No.1 on 15-01-2015. From the application it does not become clear, whether crop is Khodava or not. As per case of the defendant No.1, he had cultivated sugarcane crop in the year 2012 and thereafter he has again cultivated Khodava crop. The documents produced by the plaintiff also show that, the plaintiffs have borrowed loan from the society. However, from the said documents it does not become clear that, those loan amounts were taken for sugarcane crop.

10. Record prima-facie shows that, the sugarcane crop was sent to the Sugar Factory by the defendant No.1. In support of his case the defendant No.1 has produced documents showing

that, there is dispute regarding amount of rent regarding beer-bar. Thus, taking into consideration the entire record, I am of the view that, it is not acceptable that, the defendant No.1 has cultivated the crop as Karta of the parties. The 7/12 extract prima-facie shows that, the crop was in Gat No.735 in 2013-2014 which was ready for cutting. Hence, there is substance in the submission of the defendant No.1. No doubt there is substance in the submission of learned counsel for the plaintiff that, theory of partition is not acceptable as from 1H-30R area crop is sent to the factory. But as per case of the defendant he has cultivated the crop with the consent of the plaintiffs.

11. It is pertinent to note that, even if bill amount is deposited in the Court then none of the parties will be benefited by the same as the same will be lying with the court. On the other hand as the defendant No.1 has spent for cultivation of the crop by borrowing loan, hence if the amount is taken by him, then there is no question of causing prejudice to the plaintiff. No purpose will serve by keeping the amount in the Court till final disposal of the suit. The plaintiffs can claim relief of furnishing accounts. Hence, I proceed to pass following order.

ORDER

1. The application is rejected.
2. In view of peculiar facts and circumstances of the case, parties to bear their own costs.

Palus. **(Smt. A. K. Mandavgade),**
Date: 06-05-2015 **Civil Judge, J.D. Palus.**