

Common Order below Exh. 86 & 87
(Passed on 17.06.2022.)

The plaintiff has prayed for issuing show cause notice on the Police Inspector, Police Station Karkamb and The Tahasildar, Pandharpur, on the grounds as under :

- i) The Police Inspector, Police Station, Karkambh is giving threats to the plaintiff and his sons to foist offence under section 353 of the Indian Penal Code read with Section 34 against them.
- ii) The police and revenue officers are directly interfering in the suit property during the pendency of the suit for partition.
- iii) The police and revenue officers are illegally providing police help to the defendant Nos.1 & 2 for taking away standing sugarcane crop.
- iv) The police and revenue officers are assisting defendant Nos.1 & 2 during the pendency of the civil suit.

2. Heard learned advocate Shri Kulkarni for the plaintiff. He contended that application of defendant No.1 & 2 under order 39 rule 1 & 2 of the C.P.C. has been rejected by this court vide order dated 08.12.2021. He contended that vide application at Exh.70, the defendants had prayed for restraining the plaintiff from creating any obstruction while taking standing crop to sugar factory. It is his contention that the said order below Exh.70 has been challenged before Hon'ble Appellate Court and Misc. Civil Appeal is pending. Learned advocate Shri Kulkarni contended that the Tahasildar,

Pandharpur has not followed procedure as laid down under 5 (2) of the Mamlatdars' Court Act (hereinafter 'Act'). He took me through the documents listed below Exh.91/2 which is an order by Tahasildar, Pandharpur therein directing the Police Station, Karkambh to give police assistance to the defendants Nos.1 & 2. He pointed out that, the order do not speak that it has been passed as per Section 5 of the Act of 1906. It is his contention that the suit property is not yet partitioned. Therefore, sugarcane crop standing in the suit property is jointly owned by the plaintiff and defendants. Therefore, due to dispute about the right and interest of the parties over the sugarcane crop the Police Inspector, Police Station, Karkambh and the Tahasildar, Pandhapur ought not to have assisted to defendant Nos.1 & 2 in taking away the sugarcane crop to the sugar factory that too when such right over the suit property is pending decision by this Court. He prayed for issuing show cause notice.

3. Per contra, learned advocate Shri More for the defendant Nos.1 & 2 submitted that Tahasildar, Pandharpur and Police Inspector, Karkambh are not parties to the suit. Therefore, no notice should be issued upon them. It is his contention that the plaintiff ought to have preferred an appeal before the Collector, Solapur against the order of the Tahasildar, Pandhapur, had he felt aggrieved. It is his contention that provisions for preferring appeal have been substantially provided. It is his submission that theory of harm at the hands of Police is false.

4. I perused the record. The application at Exh.70 has been moved by the defendant Nos.1 and 2 wherein in para No.2, defendant No.2 has specifically stated to have sown sugarcane which was ready for processing. In para No.5 of the said application, defendant Nos.1 & 2 have clearly stated that plaintiff and his sons are creating obstruction in taking sugarcane crop to the sugar factory. While deciding

application Exh.70 my learned predecessor has found absence of balance of convenience and irreparable loss in favour of the defendant Nos.1 and 2. In para No.6, page 5 of the order, my learned predecessor has clearly observed that “7/12 extract of the Gat No.474 goes to show that, the area of 62R land is jointly possessed by the plaintiff and defendants”.

5. My learned predecessor further observed that “ 7..... 7/12 extracts of the suit property goes to show that the names of plaintiff and defendants are recorded to the record of rights of the suit property” and with these observations prayer of the defendant Nos.1 and 2 at Exh.70 was rejected on 08.12.2021.

6. Thereafter, defendant Nos.1 and 2 approached to the Tahasildar, Pandharpur on 11.01.2022, with prayer to get police assistance for harvesting sugar cane. The Tahasildar, Pandharpur called on the report from the circle officer, who submitted the said report on 01.02.2022. The report at Exh.91/2 and 91/3 at page No.7 clearly speaks about the pendency of the present civil suit bearing No.272/2019. As per explanation provided under Section 5 of the Mamlatdars' Courts Act, 1906 the exercise by joint owner of any right which he has over the joint property is not of dispossessing or disturbing of possession of other joint owner or owner within meaning of this Section.

7. In the case in hand, as the circle officer was aware about the pendency of the present suit, as it has been mentioned in the report at Exh.91/3. Consequently, Tahasildar, Pandharpur has also got information about the pendency of the suit. They ought to have directed the parties to produce the order passed below Exh.70 and may have perused it which would have clearly thrown light about the joint ownership of the plaintiff and defendants over the sugarcane.

8. Thus, it appears that the Tahasildar has not made detailed inquiry about the observations made by my learned predecessor in order below Exh.70 and has also not considered the ingrain of Section 5 of the Act 1906. But, in my view, the Tahasildar and the Police Inspector requires to be heard in detail, hence the order :

ORDER

- i) Issue notice upon the Tahasildar, Pandharpur and The Police Inspector, Police station, Karkambh calling upon their say over the present application to be filed within one month,
- ii) Plaintiff do provide copy of present application along with the notices. Order dictated in open court in presence of both the counsel and digitally signed

Date : 17.06.2022.

[A. R. Yadav.]
Jt. C.J.J.D, Pandharpur