



Order below Exh.5 in Miscellaneous Civil Appeal No.30 of 2024
(CNR No. MHST01000573-2024)

01. Perused application. Heard appellant and respondent No.1 at length. In spite of service of notice on the respondents, respondents failed to file their say. Though respondent No.1's Advocate sought adjournment on the ground that, their Senior is unavailable, however considering the paucity of time in closure of Sugar Factory, it is just and proper to hear the parties on merit.

02. Respondent No.1 has filed Regular Civil Suit No.47 of 2003 for partition of Gut No.371 situated at Sasurve, Taluka Koregaon. Appellant's family member has sold out 31 R land from Gut No.371 to respondent No.1. However, according to appellant, respondent No.1 is not in possession of the 31 R land. This submission of the appellant gets support from orders passed in Regular Civil Suit No.93 of 1989 filed by Respondent No.1. Respondent No.1 had filed the aforesaid suit seeking permanent injunction against appellants which was dismissed. The said order was confirmed in Regular Civil Appeal No.5 of 1996. Thus, prima facie though respondent No.1 owns 31 R land in his name in Gut No.371, but possession appears to be with appellant.

03. It is settled law that, if a stranger purchases a share of a coparcener in the coparcenary property, the only remedy to the stranger is to file a suit for partition and seek his separate possession. Thus, real controversy between the parties is with regard to exact location of 31 R

land in Gat No.371.

04. Be that as it may. The situation now is that, sugarcane crop is standing on 60 R land in Gut No.371 which is ripe for cutting. The appellant submits that, due to shortage of water, sugarcane is getting dried up. Therefore, he had sought permission to cut the sugarcane crop for crushing at Sugar Factory by filing application at Exh. 340 before the Trial Court. However, the application Exh.340 is rejected by the learned Trial Court by its order dated 16.03.2024.

05. Appellant submits that, entry of the sugarcane crop is made with Jarandeshwar Sugar Factory, however that Sugar Factory is now closed. The only Sugar Factory which is still working is Ajinkyatara Co-operative Sugar Factory, Shendre which is about to be closed on 05.04.2024. The respondent No.1 contends that, appellant may be permitted to cut sugarcane crop leaving aside sugarcane crop standing on 31 R land. In appears, respondent No.1 apprehends appropriation of sugarcane crop by appellant to his advantage.

06. In the background of counter claims by appellant and respondent No.1 with regard to the sowing of sugarcane in Gut No.371. If sugarcane crop is left without cutting and crushing, it would get damaged due to unavailability of water which will ultimately cause loss to appellant as well as respondent No.1. No purpose would be served by keeping sugarcane crop standing in the field thereby causing loss to the parties. Thus, if appellant is allowed to cut the sugarcane crop and send it for crushing to Ajinkyatara Co-operative Sugar Factory, Shendre, and further directing appellant to deposit the entire amount received from the Sugar Factory in the Court, would protect the rival claims of appellant

and respondents. Hence, following order.

ORDER

1. The appellant is allowed to cut sugarcane crop from Gut No.371 situated at Sasurve, Taluka Koregaon and to send it for crushing to Ajinkyatara Co-operative Sugar Factory, Shendre.
2. The respondent No.1 or his agents are restrained from obstructing appellant from cutting the sugarcane crop.
3. The appellant to deposit the entire amount of sugarcane crop received from the Sugar Factory before the Learned Trial Court.

Satara.
Date : 01st April, 2024.

(N.H. Jadhav)
District Judge-3, Satara.