

ORDER PASSED BELOW EXH. 96 IN R.C.S. NO. 139/2002

1. By this application the plaintiff has asked the permission to withdraw Rs. 5,382/- which are deposited by defendant no.1 in this court. This application is filed on the ground that the defendant no.1 has withdrawing the sugarcane bill of the sugarcane grown in the land which is allotted to plaintiff no.2 and accordingly by order below exh.36, this court has directed to deposit $\frac{1}{2}$ amount of sugarcane bill withdrawing by defendant no.1 in the month of March 2003. The defendant no.1 has deposited $\frac{1}{2}$ amount of Rs.5,381.50 in total figure Rs.5,382/-. The amount deposited by defendant no.1 being the bill of sugarcane grown by plaintiff no.2, the plaintiff no.2 is having right to withdrawn the amount. Hence the application.

2. The defendant has contested this application on the ground that the plaintiff cannot be permitted to withdraw the amount as the dispute between the parties is pending. It is also objected by the defendant that this court has not finally adjudged that the sugarcane crushed in the name of defendant no.1 was grown by plaintiff no.2 as well as there is no final adjudication about the possession and rights of the parties. Hence defendants have prayed to reject the application.

3. As per the order passed below exh.36, the defendant no.1 was directed to deposit Rs.5,381.50 within one month. Accordingly the defendant no.1 has deposited an amount of Rs.5,382/- at 'C' no. 31. By this application the plaintiff no.2 is praying the withdrawal of the same amount. Hence to know whether plaintiff can withdraw the amount, it is necessary to consider the nature of dispute between the parties. It is the pleadings of the plaintiffs that as per the family arrangement, the plaintiff no.2 and defendant no.1 were cultivating 35 guntha out of block no.285 and accordingly the plaintiffs and the defendant no.1 have grown the sugarcane crop. The contentions raised in application at exh.36 shows that in the year 2001-02, the plaintiff no.2 has raised the crop of sugarcane in 15R area and defendant no.1 has raised the crop of sugarcane in another 15R area. But by joining hands with the officials of the sugar factory, the defendant no.1 recorded all the sugarcane crop grown in 30 R area, in his name and as such the crop given to the sugar factory for crushing was considered by the sugar factory as the crop of defendant no.1 and accordingly the sugar factory has released the bill of the crop in the name of the defendant no.1. Hence plaintiff no.2 has filed an application at exh.24 for stopping the payment of the bill to defendant no.1. Accordingly this court has passed an order to stop the payment, but before the order

was communicated to the sugar factory, the bill was withdrawn by defendant no.1 and the withdrawal bill was of Rs.10,763/-. Accordingly again plaintiff has filed an application at exh.36 for depositing $\frac{1}{2}$ of the amount of Rs.10,763/-. Hence considering the contention raised in exh.36, the plaintiff no.2 has claimed this amount for the sugarcane crop which was grown by him in 15 guntha area.

4. The defendants have contested this suit by filing their written statement at exh.41 and they have come with the defence that since the 1977-78 by the oral partition the defendant no.2 was having possession over 35 guntha and defendant no.1 was having possession over 32 guntha of the land. Accordingly as per the partition the parties are separately cultivating their share. Thereafter the plaintiff no.1 who was not having any right or interest in the suit land came with the false theory of her possession in view of a fraudulent bill exhibited by her mother, Chandrabai. Accordingly the plaintiffs are not having any possession over the block no. 285. Hence considering the pleadings of both the parties, the dispute is about the joint possession or the separate possession of the parties. Hence if plaintiffs succeed to prove their claim, the plaintiff no.2 can withdraw the amount deposited in this court after the final adjudication. But if defendant would succeed in proving their claim,

then defendant may require to again file a litigation for a recovery of the amount which is deposited in the court, if it is permitted to be withdrawn by the of plaintiff no.2. It was tried to be argued by advocate for plaintiff, if plaintiff no.2 is not permitted to withdraw the amount, then he will suffer a loss as he could not incur the amount for cultivating the suit land. As considered herein above the dispute between the parties is about the possession. Hence the right to withdraw the amount can be adjudged only on the proof of the possession and cultivation of the crop by plaintiff no.2 in his own capacity. Hence I find that if at this stage plaintiff no.2 is permitted to withdraw the amount, then there are chances of multiplicity of proceedings, but if the amount remains in the court then it would not cause loss either to the plaintiff or the defendant. Accordingly I pass the following order.

O R D E R

1. The application is hereby rejected.
2. Costs in main cause.

Place : Patan

Date : 26.11.2008

(P. P. Kestikar)
Jt. Civil Judge, Junior Division,
Patan.