

MHST160011322023



R.C.S.No. 462/2023
Shankar Vs. Vijaysing

Order Below Exh.66
(Passed on 22th October, 2024)

This is an application filed by the plaintiff for grant of status-quo in respect of the measurement, which is scheduled to be carried out on 23.10.2024 on account of the application filed by the defendant No.12. It is contended by the plaintiff that he is having strong objection for the said measurement. The defendant concerned stated him that he is not going to stop the measurement, unless there is any stay order to it. On last date, the plaintiff has filed on application for cancellation of said measurement alongwith the certain documents on record. Said application is still pending on account of non filing of say by the defendant No.12. Therefore, the defendant No.12 is about to carry out the measurement and on its basis, he is about to alienate the suit property. If the defendant get success in his attempts of creating third party interest in the suit property, it will definitely create complications in the matter.

2. The defendant No.12 has resisted the application on the ground that the plaintiff cannot claime such a relief as he is neither the owners, or tenant in the suit property. The appeal filed by the defendant No.12 against the order of Ld. Tahsildar in a proceeding under Section 32G of the Bombay Tenancy and Agricultural Land Act is decided in favour of the defendant. Even, said decision is

maintained uptill the Hon'ble Maharashtra Rent Tribunal and The Hon'ble Bombay High Court. The plaintiff has not come with the clean hands before the Court. He has no *locus standee* to raise such objection in respect of the measurement of the land of defendant. Such type of application has already been filed just to waste the valuable time. Hence, he prayed to reject the application.

3. Perused the application and say alongwith the entire record. Heard both the sides, at length. It is a matter of record that the application for temporary injunction filed by the plaintiff and the application filed by the defendant under Order 7 Rule 11 of the Civil Procedure Code is pending. During argument, it is vehemently submitted by Ld. Advocate for the plaintiff that the plaintiff is in possession of the suit property and he cannot be dispossessed without following due process of law. He further submitted that the defendants by carrying out such a measurement, is trying to create third party interest in the suit property by its sale and thereby he is intending to disturb the possession of plaintiff.

4. On the other hand, Ld. Advocate for defendant No.12 submitted that the plaintiff is not in possession of the suit property. All the revenue entries are in favour of the defendant. He also pointed out the earlier order dtd.08.08.2023 passed below Exh.15, by which this Court rejected the prayer for plaintiff to grant status quo in the matter. However, it is pertinent to mention here that now the defendant has applied for the measurement of the suit property by the Land Records Department during pendency of this proceeding and even without informing about it to the Court. This fact has been

admitted by the defendant during his argument.

5. Ld. Advocate for the defendant further submitted that the defendant No.12 has paid measurement fees in the concerned office and therefore, the measurement is scheduled be carried out on 23.10.2024. If any adverse order is passed against him, it will definitely cause him financial loss. He further submitted that on the other hand the plaintiff will not have any adverse effect.

6. Considering the rival submission of both the parties, it is not in dispute that the measurement is scheduled to be carried out on tomorrow, itself. Several applications are pending before the Court for argument. The plaintiff has come with a specific case that he is in possession and without following due procedure of law, he cannot be dispossessed. No doubt, the factum of possession has to be decided at proper stage by offering fair opportunity to both the parties. However, at this prima facie stage, the application under Order 7 Rule 11 of the Civil Procedure Code and the temporary injunction application are required to be decided, first. In such circumstances, the attempts on behalf of the defendant No.12 for carrying out the measurement of the suit property without the knowledge of the Court has to be dealt with seriously. If the measurement as applied by defendant No.12 is postponed, it will not cause any prejudice to the concerned defendant. The applications filed before the Court are to be decided on merit. For which, both the counsels showed their readiness to expedite the matter. Hence, the following order:

ORDER

1. The application (Exh.66) is disposed off with following directions:
 - (i) The measurement applied by defendant No.12 be postponed till decision of the application for temporary injunction and the application under Order 7 Rule 11 of the Civil Procedure Code.
 - (ii) The concerned Land Records Department be informed accordingly.
2. All the parties to take note.

[Dictated and pronounced in open Court.]

Place : Wai
Date : 22.10.2024.

(R.M. Bhende)
Jt. Civil Judge Junior Division,
Wai, Dist. Satara.