

IN THE COURT OF DISTRICT JUDGE-1, WASHIM,
TQ.DIST.WASHIM.

CIVIL MISC. APPLICATION NO.365 OF 2022.
(CNR No.MHWS01-001552-2022)

Ganesh Fakira Rathod Vrs. Shalini Vijay Wakode and Ors.

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ORDER BELOW EXH.5.

1. Perused application and documents filed on record. Heard, learned advocate Shri C.S. Poddar for the applicant.
2. In this case, applicant filed Special Civil Suit No.128 of 2011 before Civil Judge Senior Division, Washim against respondent Nos.1 to 3. This suit came to be decided on 02.04.2014 by which defendants were directed to repay the consideration amount.
3. Being dissatisfied, appellant (original plaintiff) filed First Appeal No.622 of 2014 before Hon'ble High Court in which order of 'Status Quo' was passed and defendant Nos.1 to 3 were restrained from creating third party interest till the decision of appeal. Thereafter, non applicant No.4 Pankaj filed an application in the First Appeal 622 of 2014 for joining him as a party and also for modification of interim order.
4. According to learned advocate for the applicant, during the pendency of appeal, respondent Nos.1 to 4 tried to execute the sale-deed though there was a 'status quo' order. However, Sub-Registrar refused to register the document. Meanwhile, the first appeal was transferred to this Court and

new number was give as Regular Civil Appeal No.64 of 2015. In this appeal, respondent Nos.1 to 4 appeared through their advocate. According to the learned advocate for the applicant, though respondent Nos.1 to 4 were aware of the order of status quo, respondent No.4 Pankaj filed the suit against respondent Nos.1 to 3 in respect of suit land bearing Special Civil Suit No.2 of 2019 before Civil Judge Senior Division, Washim and in that suit, they have not mentioned about the pendency of First Appeal 622 of 2014 or new Regular Civil Appeal No.64 of 2015 and status quo order passed therein.

In this suit, respondent Nos.1 to 3 appeared and said suit came to be decreed. Present applicant came to know about all these facts. Now on the basis of decree passed in Special Civil Suit No.2 of 2019, mutation is also effected in the name of defendant No.4 and he is going to sell out the suit land by making plots illegally. Defendant No.4 is likely to create third party interest and if he succeeds in its, the very purpose of filing of appeal will be frustrated.

5. Learned advocate has relied upon authorities reported in ***AIR 1996, Rajasthan 73, Urban Improvement Trust, Jodhpur, Vrs. Smt. Sohni Devi and another.*** In this case it is held that -

(A) Civil P.C. (5 of 1998), O.39, Rr.2, 7 - Injunction - Illegal construction - Order for demolition by Urban Improvement Trust - Suit against, with prayer for permanent injunction restraining authorities from demolishing construction - Injury about to be caused

was not only threatened but there was real danger to subject-matter of suit being damaged by way of demolition - Order restraining authorities from demolishing construction during pendency of suit - Was just and proper.

He also relied upon authority, *AIR 1976, Allahabad 447, The Allahabad Bank Ltd. Vrs. Rana Sheo Ambar Singh and others*, in which it is held that -

(J) Civil P.C. (1908), S.151, O.39, R.1 - Issue of temporary injunction under inherent powers.

The courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order 39, C.P.C. if the Court is of opinion that the interests of justice require the issue of such interim injunction. The mere fact that there are certain provisions as regards the issue of injunction in Order 39, C.P.C. does not debar the court from passing orders of temporary injunction for doing justice in the exercise of its inherent power under S.151 of the Code, though the discretion has to be exercised with the extreme caution and applied only in very clear cases.

Held that as the judgment-debtors had been avoiding the payment of the decretal money and preventing the decree holder on one excuse or the other to reap the fruits of the decree, a case had been made out for the preservation of non-mortgaged assets of the deceased debtor in the meantime in status quo to protect the rights and interest of the decree-holder by an action in the nature of quia timet.

6. I have gone through the above authorities. On going through the documents filed on record and the authorities relied

by the learned advocate, it is necessary to pass the order in order to preserve the suit property and avoid multiplicity of litigation. So, I proceed to pass following order.

ORDER

- 1) Issue show cause notice to respondent Nos.1 to 8, returnable on 13.10.2022.
- 2) Meanwhile, respondent Nos.1 to 4 are restrained temporarily from transferring or creating third party interest in respect of suit property till the filing of say by them.
- 3) Applicant to comply provisions of Order 39, Rule 3 of the Code of Civil Procedure.
- 3) E.P. and S.B. allowed.

Date: 03.10.2022.

(H. M. Deshpande)
District Judge-1, Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original judgment/order.

Name of Stenographer	:- R.R.Bharad, Stenographer (Grade-I)
Name of Court	:- Shri H.M.Deshpande, District Judge-1 and Additional Sessions Judge, Washim, Tq. Dist. Washim.
Date of Judgment/ Order	:- 03.10.2022
Judgment/Order signed by the Presiding Officer on	:- 03.10.2022
Judgment/Order uploaded on	:- 03.10.2022