

ORDER BELOW EXH. 33

By this application the plaintiff has prayed for directions to the parties to maintain the status quo. The defendant has filed his say at Exh. 26 and opposed the application.

2. The plaintiff contended in the instant application that, the disputed way for cultivation of the field in the Gut no. 61 is already vacated on 29/08/2016 by preparing panchnama. But, with intent to cause the mental harassment to the plaintiff, the defendant is frequently filing applications before the Tahsildar for vacating the said way. The plaintiff has also filed an application at Exh. 5 for temporary injunction against the defendant. Therefore, till decision of the application at Exh. 5, it is necessary to direct the defendant to maintain the status quo.

3. The defendant has strongly opposed the application by filing his say at Exh. 34. He denied the contentions of the plaintiff and in addition he submitted that, the instant suit is brought by the plaintiff against the interim order passed by the Commissioner in revision application No. 277/BND/54/Belmandal/2015-16. Now, said revision is finally decided therefore the instant application has become infructuous. The plaintiff should have placed his grievance before the commissioner itself. This application of status quo is filed for killing time of the court and it is an abuse of process of law. The defendant has filed various documents along with list of documents dated 12/01/2016. Those documents show the conduct of the plaintiff.

4. Heard learned advocate Shri. S. M. Wasnik for the plaintiff and learned advocate Shri. P. V. Patil for the defendant. Also perused the Plaintiff's contentions in the applications at Exh.5 and Exh. 11 as well as the documents placed on record by both the parties.

5. In pending application at Exh. 5, the plaintiff has prayed to restrain the defendant from using the way from the plaintiff's field and crops standing therein, in Gut no. 29, Gut no. 28 and Gut no. 30. It is his contention that, vide order dated 26/12/2001, The Tahsildar, Karanja had granted the way to the

defendant for cultivation of his field in Gut No. 61, from the east-south Joint dhura of Gut No. 30, 29 and 28. Said order was challenged up to the Divisional Commissioner, Amravati. In which the Divisional Commissioner, Amravati passed an order dated 20/06/2016 and directed to vacate the way granted by the Tahsildar vide order dated 26/12/2001. The defendant by misusing the order of Commissioner dated 20/06/2016, without creating the way from the joint dhura of Gut no. 29, 30 and 28 i.e. as per the order of Tahsildar, created the new illegal way from the crops of the plaintiff.

6. Instant case was fixed on 01/09/2021 but on 23/08/2021, the plaintiff, with list at Exh. 39 filed on record the letter of Tahsildar, Karanja dated 17/08/2021 and prayed to decide the instant application at the earliest. Accordingly, this court by issuing the notice to defendant secured his presence and heard both the sides at length. I have carefully perused the said letter dated 17/08/2021 by Tahsildar, Karanja. It appears from said letter and references mentioned therein that, the Tahsildar has requested to the police station, Karanja to provide the police aid for execution of order of Tahsildar dated 26/12/2001, passed in case no. BND-54/Belmandal/4/2001-02. The plaintiff has also filed the certified copy of panchnama dated 29/08/2016 along with list at Exh. 44 and submitted that the order of Tahsildar dated 26/12/2001 is already executed vide panchnama dated 29/08/2016. Therefore, it is necessary to direct the defendant to maintain the status quo.

7. I have also carefully perused the documents produced by the defendant along with the list of documents dated 12/01/2016. It appears from the document No. 7 to 14 that the way so granted as per order dated 26/12/2001 was created on 21/09/2005. Thereafter, from perusal of the document No. 17 i.e. Order Sheet in the proceeding No. BND-54//Belmandal/12/2013-2014 it appears that, on 21/07/2014 the plaintiff had closed the way so created vide order dated 26/12/2001. Thereafter, the obstacles in said way were removed vide panchnama dated 31/07/2014 (Document no. 23). The Order Sheet in the proceeding No. BND-54//Belmandal/12/2013-2014 also shows that again said way was closed by the plaintiff on 31/08/2014. Therefore, it is clear from the documents placed

on record by the defendant that, the plaintiff had several times created obstructions in the right to way of the defendant. The plaintiff has also suppressed these material facts from the record.

8. While praying for the status quo, the plaintiff has to indicate that what is the actual factual position and what the status quo is. In this case, the plaintiff has contended in para no. 4 of the application at Exh. 5 that, on 29/08/2016, the defendant in collusion with the Tahsildar misused the order of commissioner and thereby created the new way from the plaintiff's field. At the same time by relying on the panchnama dated 29/08/2016, he claims that the order of Tahsildar dated 26/12/2001 is already executed. These two contrary statements of the plaintiff have prima facie created doubt in his case. Moreover, he has not produced any sketch or map which shows the way granted by the Tahsildar and the alleged new way created by the defendant by misusing the order. Therefore, present status quo cannot be ascertained from the material available on record.

9. Apart from the above discussion, the instant suit is for simplicitor injunction between two private parties. The letter of Tahsildar dated 17/08/2021 is the communication between two public authorities regarding their public duties. At this juncture, if the status quo is granted, it would amount the stay to the execution of the orders of revenue authorities behind their back, that too when said orders are not in challenge before this court in this suit. Therefore from the entire above discussion, I am of the opinion that this is not a fit case to grant the relief of status quo. Therefore, this application is liable to be rejected. Hence the following order :-

ORDER

Application stands rejected with cost.

Karanja.
Dated: 27/08/2021.

Sd/-
(K. K. Chaudhari)
Jt. Civil Judge Junior Division,
Karanja, Dist. Washim

CERTIFICATE

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

Name of Steno. :- R. A. Charthal (Stenographer-3)

Court Name :- Jt Civil Judge (Jr. Dn.) and J.M.F.C.,
Karanja (Lad), Dist. Washim.

Date :- 27/08/2021

Order signed by :- 27/08/2021
the presiding
officer on

Order uploaded :- 27/08/2021
on