

MHYA210025882022



ORDER BELOW EXH. 21 IN RCS No.80/2022.

(Pramod Natthu Pawade -Vs- Madan Daulatrao Pawade +9)

(Passed on 24-02-2023)

1. The application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 is filed by the plaintiff. Considering the emergent circumstances, the plaintiff asked for ad-interim ex-parte relief.
2. Perused the application, plaint and material placed on record. Heard, Ld. Advocate Shri. R. H. Haidery for plaintiff.
3. In this suit, the plaintiff challenged order dated 07.06.2022 in बहिवाट दावा रा.मा.क्र./१२/एम.सी.ए.५/२०१९-२०२० मौजा वणी passed by Naib Tahasildar, Revenue, Wani under Section 5 of Mamlatdar Act, 1906 and confirmed by Sub Divisional Magistrate, Wani in अपील रा.मा.क्र.२९/एम.सी.ए.-२३/२०२१-२२ vide order dated 31.10.2022. It is averred that the findings of facts recorded by Naib Tahasildar, Wani and confirmed by S.D.O. Wani vide his order dated 31.10.2022, is without following the procedure and considering actual position. By way of order dated 07.06.2022, Tahasildar, Wani has directed the plaintiff to leave 5 feet space adjoining to the common dhura of his Gat No.129/2A for bullock cart road having width of 10 feet for the way of adjoining land

holder i.e. defendants. Said order has been confirmed by the Sub Divisional Magistrate, Wani. It is the contention of the plaintiff that there is no road or *pandan*. Thus, by way of this suit, plaintiff claims to restrain defendants from interfering his possession over the Gat No.129/2A.

4. By way of present application, applicant/plaintiff is claiming ad-interim injunction against defendants. He has filed notice issued by Talathi, Wani vide list of documents Exh.20/1 and submitted that in pursuance of order of Mamlatdar's Court and S.D.O. Wani, defendants are trying to disturb his possession and grab his land of 5 feet adjoining to the common *dhura* of Gat No.128/1. Perusal of notice issued by Talathi, Wani, it shows that between common *dhura* of field Gat No.129/2A & 128/1 situated at mauza Wani, a road having width 5 + 5 feet be cleared for bullock cart. In this application, the plaintiff prayed for granting ad-interim status-quo against defendants. However, the notice has been issued by Talathi, Wani i.e. State and in this suit, he is not party. In this backdrop, ad-interim injunction cannot be issued against Talathi merely on the ground that he is not party to the suit. So also, the plaintiff has not prayed for the same.

5. In so far as, the prayer of plaintiff regarding defendants is concerned, the Talathi, Wani has issued notice on 14.02.2023 and plaintiff has filed present application on 23.02.2023, more than after ten days of issuance of notice. The plaintiff having ample

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opportunity to approach the Court, just after receiving notice. However, in the interest of justice, the plaintiff's claim is based on the passing of order by Tahasildar, Wani under Section 5 of Mamlatdar's Act and confirmed by Sub Divisional Magistrate, Wani is without following due procedure and principles of natural justice. Therefore, considering the urgency of matter, I pass following order-

ORDER

1. Ad-interim status quo is granted and thereby, defendants, their agent, servant or any other members of their family on behalf of defendants be restrained from entering in the field land of Gat No.129/2A admeasuring area 1.88 H.R. situated at Wani till 08.03.2023.
2. Matter be kept for hearing on Exh.16 & Exh.5.
3. Plaintiff is directed to comply Order 39 Rule(3) of the Code of Civil Procedure, 1908.

Date :-24-02-2023.

(P. C. Bachhale)
Jt. Civil Judge, J.D.,
Wani.