

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.76 OF 2014 WITH
CIVIL APPLICATION NO.8815 OF 2014

Nandam Goud s/o Nara Gound Uptunlla
Age 53 years, Occ. Agri.,
R/o Bank Colony, Vasmat, Tq. Vasmat, ... APPELLANT
District Hingoli (Orig.Deft.No.4)

VERSUS

1. The State of Maharashtra,
through Collector, Nanded
Taluka and District Nanded. (Orig.Deft.No.1)
2. Superintendent, State Excise,
Vasant Nagar, Nanded,
Taluka and District Nanded. (Orig.Deft.No.2)
3. Tahsildar, Tahsil Office,
Ardhapur, Taluka Ardhapur,
District Nanded. (Orig.Deft.No.3)
4. Pravin s/o Venkatesh Mamaiwar (Reddy),
Age 27 years, Occ. Business,
R/o Sayadrinagar, Taroda (Bk.), (Orig. Plaintiff)
Nanded ... RESPONDENTS

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Shri G.R. Syed, Advocate for appellant
Shri D.V. Tele, A.G.P. for respondent No.1 to 3
Shri H.I. Pathan, Advocate for respondent No.4

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CORAM: A.I.S. CHEEMA, J.

DATED: 21st January, 2015.

ORAL JUDGMENT:

1. This Appeal from Order is admitted and taken up for
hearing finally with the consent of counsel for both sides.

2. Heard learned Advocate for appellant (original defendant No.4) and learned A.P.P. for respondents No.1 to 3 as well as learned counsel for respondent No.4 (original plaintiff).

3. Original plaintiff has filed Regular Civil Suit No.154/2014 claiming declaration that he is owner and in possession of Grampanchayat House No.1071 at Malegaon. He has sought declaration that sale deed No.637 of 2010 be declared as illegal, null and void and not binding on the plaintiff. Permanent injunction is sought against defendant No.4 from causing any obstruction in activity of FL-III licence. Permanent injunction has been sought against defendant No.4 that he should not cause any obstruction and interference with the possession of plaintiff. In such suit, application Exhibit 5 was filed, in which on 26.3.2014, ex parte ad-interim injunction was granted in favour of the plaintiff against defendant No.4 till appearance of defendant No.4. It appears, defendant No.4 appeared in the matter and filed his say, supported by documents, opposing the temporary injunction application.

4. It is argued and there is no dispute regarding the fact that, defendants No.1 to 3 raised objection in the suit on legal points that the matter could not lie against these defendants with

regard to grant of FL-III licence. It appears, because of this preliminary issue was framed. Plaintiff filed another application Exhibit 38 claiming that defendant No.4 had appeared and took time to file say and is trying to dispossess the plaintiff and interim injunction should be granted. The trial Court passed impugned order below Exhibit 38 dealing with Section relating to Section 9A of the Code of Civil Procedure and that in spite of preliminary issue being raised, the trial Court could issue interim orders of injunction till decision of the preliminary issue. The Court then proceeded to pass impugned orders and directed that the defendant No.4 was restrained from obstructing the plaintiff with respect to disputed property as per the licence FL-III till determination of preliminary issue.

5. Learned counsel for the appellant - defendant No.4 is submitting that, the order was unreasoned as it did not refer to questions whether there was a prima facie case in whose favour balance of convenience lie; and who will suffer irreparable injury. The learned counsel has submitted that, the question of preliminary issue regarding maintainability of suit was matter between plaintiffs and defendants No.1 to 3, and for deciding that issue, the Court could not have deferred deciding Exhibit 5 application and pass such interim orders.

6. Learned counsel for the respondent No.4 - original plaintiff submits that the plaintiff has filed affidavit-in-reply and according to plaintiff, he is in possession of the suit property and running business.

7. I find that, the trial Court has not decided temporary injunction application Exh.5. The dispute regarding temporary injunction is basically between plaintiff and defendant No.4. The preliminary issue raised by defendants No.1 to 3 is basically matter between plaintiff and defendants No.1 to 3 with respect to FL-III licence. Looking to the prayers of the plaint also, the dispute of injunction is basically between the plaintiff and defendant No.4 only. As such, the Court could not have kept the temporary injunction application hanging. The order passed below Exhibit 38 is in the nature of grant of ad-interim injunction. It will be appropriate that the trial Court decides the temporary injunction application within a month, irrespective of the preliminary issue raised by defendants No.1 to 3.

8. For the above reasons, the present Appeal from Order is disposed of with directions to the trial Court to expeditiously decide the application Exhibit 5 within a month, irrespective of the preliminary issue raised by defendants No.1 to 3, which is between plaintiff and defendants No.1 to 3.

Impugned order dated 24.4.2014 below Exhibit 38 will operate till decision of Exhibit 5 application.

9. In view of disposal of Appeal from Order, Civil Application No.8815/2014 does not survive and same stands disposed of.

(A.I.S. CHEEMA, J.)