

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5603 OF 2016

(ANANDA MAROTI JAWALKAR....VS.. CHANDRABHAN RAMKRISHNA JAWALKAR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri U.J.Deshpande, advocate for Petitioner.
Shri P.S.Gavai, Advocate with Respondent.

CORAM : Z.A.HAQ, J.

DATED : APRIL 26, 2017.

Heard.

The original defendant has challenged the order passed by the trial Court by which the application (Exh.No.55) filed by the plaintiff seeking police aid to enable him to sow the suit field is allowed.

The plaintiff has filed civil suit against the defendant praying for decree for permanent injunction restraining the defendant from entering the suit field and disturbing the peaceful possession of the plaintiff over the suit field. In this civil suit, the plaintiff filed an application praying for temporary injunction which was allowed by the trial Court by the order passed on 1st February, 2011 and the trial Court restrained the defendant from disturbing the possession of the plaintiff over the suit field till disposal of the suit. This order was challenged by the defendant in Misc. Civil Appeal No. 8 of 2011, which was dismissed by the judgment delivered on 23rd February, 2011. The defendant challenged the above judgment and order before this Court in Writ Petition No. 1347 of 2011 which is dismissed on 31st March, 2011.

The plaintiff filed application (Exh.No.55) complaining that the defendant was interfering with his possession and was not allowing him to sow the field and prayed that police aid be granted. The learned trial Judge, by the impugned order, has directed the Police Station Officer, Akot File Police Station, Akola to provide police aid on payment of necessary charges by the plaintiff. The defendant, being aggrieved by the said order, has filed this petition.

The submission on behalf of the petitioner/defendant is that earlier also the plaintiff had filed application (Exh.No.23) on or about 14th February, 2011 praying that police aid be granted and that application was withdrawn and therefore, the present application is not maintainable. The petitioner/defendant contends that in spite of the order of temporary injunction he continued in possession of the suit field and undertook the agricultural operations every year and therefore, there is no question of grant of police aid to the plaintiff as prayed by him.

After hearing the learned advocates for the respective parties, in my view the issue of possession is not relevant while deciding the application (Exh.No.55). This issue is decided earlier while deciding the application filed by the plaintiff praying for temporary injunction. At this point, the only thing which is required to be considered is whether the prayer of the plaintiff for grant of police aid has to be granted. I find that the trial Court has properly considered the facts of the case and has rightly allowed the application (Exh.No.55) filed by the plaintiff. I do not find any patent illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

The writ petition is **dismissed** with exemplary costs quantified at Rs.25,000/-.

The defendant shall deposit this amount before the trial Court within one month and on deposit of the amount it shall be given to the plaintiff. If the defendant fails to deposit the amount within one month, the trial Court shall take appropriate action against the defendant and pass appropriate orders considering it to be non-compliance of the order passed by this Court.

After examining the matter, I find that there is an audacious attempt on the part of the petitioner/ defendant to subvert the authority of the Court. By the order passed on 1st February, 2011, the trial Court recorded that the plaintiff has prima-facie proved that he is in possession of the suit field and restrained the defendant from disturbing the possession of the plaintiff over the suit field till disposal of the civil suit. This order was challenged by the defendant in Misc. Civil Appeal no. 8 of 2011 which was dismissed on 23rd February, 2011. The defendant had filed Writ Petition No. 1347 of 2011 which is dismissed on 31st March, 2011. Though the order of temporary injunction, which is maintained up to this Court, is operating since 1st February, 2011 and this Court while dismissing the Writ Petition No. 1347 of 2011 has recorded that the findings of the subordinate Courts that the plaintiff is in possession of the suit field are based on proper appreciation of the documents on record, the petitioner/ defendant has shown audacity to contend that he continues in possession of the suit field since 2011.

Prima-facie I find that the petitioner/ defendant is liable for an action for committing contempt of Court by wilfully disobeying the order of temporary injunction.

I am conscious that if there is breach of an order of injunction, the plaintiff can file application under Order 39 Rule 2-A of the Code of Civil Procedure, however, in the facts

of the present case, I intend to issue show cause notice to the defendant as the wilful disobedience is on record.

Issue notice to the petitioner/ defendant to show cause why the proceedings under Article 215 of the Constitution of India and under the provisions of the Contempt of Courts Act, 1971 should not be initiated against him.

The petitioner/ defendant shall file reply/ affidavit, if so advised, till 17th July, 2017.

List the petition for further consideration on 9th August, 2017.

The office is directed to register the contempt petition separately.

Shri P.S. Gavai, advocate who represents the respondent/ plaintiff, shall file proper contempt petition till 4th May, 2017.

A copy of the petition, which will be filed by Shri P.S. Gavai, Advocate, shall also be sent to the petitioner/ defendant along with the show cause notice.

JUDGE