

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

CIVIL APPLICATION (CAS) NO. 173/2021 IN SECOND APPEAL NO.310/2019

Keshav @ Nanaji Ragnath Eratwar and others **Versus** Dattu @ Dattatray s/o Rangnath Eratwar

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri B.N. Mohta, Advocate for appellants.
 Shri Rohit Joshi, Advocate for respondent.

CORAM : S.M. MODAK, J.
DATE : 12/08/2021

Heard both the sides.

2. The appellant No.1 wants to cut 21 trees standing in the survey No.156 for the reason that it is causing damage for cultivation. In the sense that due to these old trees, there is no sufficient sunlight falling on the crops to be cultivated.

3. It is opposed on behalf respondent on the ground that the trees being embedded in the land also amounts to part and parcel of the immovable property and it is a normal rule that property needs to be preserved during pendency of the proceedings.

4. There cannot be any dispute about the proposition that trees be embedded in the land also forms immovable property. There cannot be any dispute that the suit property needs to be preserved during pendency of the proceedings. However, Court also cannot ignore the reasoning quoted on

behalf of the appellant No.1. If these trees are causing damage to the agricultural operation, the prayer needs to be considered. Not only that the appellant No.1 has also followed the procedure. There is certification by Agricultural Officer, Panchayat Samiti dated 22/11/2017. They have inspected the trees and certified that it is causing damage to the agricultural operations.

4. Now, the issue remains and it is about valuation of those trees, the appellant No.1 is ready to deposit its price in Court. This Court feels that the permission can be granted subject to two conditions. One is directing the Agricultural Officer to estimate the valuation and then only appellant No.1 can be permitted to cut the trees and sale the wood. So also he can be directed to obtain permission from necessary Tree Authorities.

5. There is also an objection taken on behalf of the respondent that the number of trees mentioned by appellant No.1 is less and in the Mediation Proceeding he has quoted about 67 Teak Wood Trees. Be that as it may, the Court is considering prayer only for 9 mango old trees along with 21 teak trees. Hence, this following direction :

DIRECTION

- a] Application is allowed.
- b] Appellant No.1 is permitted to cut their 09

mango old trees along with 21 teak trees described in the NOC dated 22/11/2017 given by the Agricultural Officer and sell the wood to the prospective purchaser on highest market price which will be offered on following conditions :

- 1] To obtain the necessary permission from concerned Tree Authorities.
 - 2] Subject to valuation done by Agricultural Officer.
- c] The respondent is permitted to bring the purchaser who may be quoting a price higher than the price estimated by the Agricultural Officer.
- d] The respondent is permitted to remain present during this exercise.
- e] Concerned Agricultural Officer is directed to do valuation of those trees as per the Rules.
- f] The appellant is directed to deposit the sale price in the Court.
- g] Appropriate decision will be taken at the time of final disposal of the appeal.
- Matter be kept on 14/09/2021.

JUDGE