

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

12 WRIT PETITION NO.9049 OF 2022

**MUKTA ALIAS MUKTABAI AABASAHEB KALE
VERSUS
PANDURANG TATYARAO KALE AND ANOTHER**

...
Advocate for Petitioner : Mr. Rajhans P. Survase
Respondent nos.1 and 2 served
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 08-02-2023

PER COURT :

. By this petition, the challenge is to the order dated 20.07.2022 passed by the Civil Judge, Jr. Division, Sailu in Civil Misc. Application No.107 of 2021 rejecting the petitioners-applicants application seeking restoration of the possession of the suit property.

2. Regular Civil Suit No.50 of 2021 was filed by the petitioner seeking an order of perpetual injunction restraining the defendants from causing obstruction, interference and from disturbing the peaceful possession and the enjoyment of the plaintiff over the suit land which is described in para-1 of the plaint. Para-1 of the plaint describes the suit property as under:

“Description of the property:

3. All that piece and parcel of the land situated

within the Registration Division and District Parbhani, Sub Division and Taluka Sailu, within the local limits of the Revenue Village Devalgaon (Gath), and bearing Gut No. 486, total admeasuring H.0 R.96.41 to the extent of H.0, R 65 and bounded as under:-

On or towards East	:	Land of Aabasaheb Kale and Aashroba Jija
On or towards South	:	Land of Ganesh Dnyaneshwar
On or towards West	:	Land of Shantabai Wavre
On or towards North	:	Nallah.”

3. By the order dated 06.05.2021, the trial Court allowed the application below Exh.5 and temporarily restrained the defendants from obstructing the plaintiff's possession over 65 R land out of Gat No. 486. By the order dated 06.05.2021, the trial Court came to a *prima facie* finding as regards the possession of the petitioner over the suit land and consequently restrained the defendants by a temporary order of injunction from interfering in the possession of the plaintiffs over the suit land. In spite of this order of injunction granted on 06.05.2021, on 18.05.2022 the defendants forcibly dispossessed plaintiff from the suit property and immediately an FIR was lodged by the plaintiffs on 18.05.2022. Civil Misc. Application No.107 of 2021 was instituted under the provisions of Order-XXXIX, Rule-2A of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking the appropriate reliefs.

4. An application came to be filed under the provisions of Section 151 of the Code seeking restoration of the possession of the suit property which has been forcibly taken over by the defendants.

5. The trial Court by impugned order dated 20.07.2022 has rejected the application by observing that the application filed under Order-XXXIX, Rule-2A has not yet been decided and as such, it needs to be first considered whether there is any breach of the order of injunction. The trial Court also held that in event the plaintiff has been dispossessed, the remedy of the plaintiff would be to file a suit under the provisions of Section 16 of the Code for recovery of the possession.

6. Learned Counsel for the petitioner in support of his contention relies upon the decision of the Madras High Court in the case of **J. Murali vs. M. Siva, decided on 15.07.2014.**

7. Considered the submissions of the learned counsel for the petitioner.

8. In the present case though respondents are served, none

appeared for the respondents and considering the facts of the case the petition has been taken up for hearing.

9. It is not in dispute that an order of temporary injunction came to be passed in favour of the petitioner on a *prima facie* case being made out that the Petitioner is in possession of the suit land. The petitioner has been forcibly dispossessed from the suit land which is also evident from the FIR which was lodged promptly on the same day i.e. 18.05.2022. The filing of the FIR and the filing of the application under Order XXIX Rule 2A *prima facie* proves that there has been breach of the order of the Court. There is no denial of the Respondents on record that they have not dispossessed the petitioner and hence no case under Order-XXXIX, Rule- 2A is made out.

10. The decision in the case of **J. Murali vs. M. Siva** (*supra*) is squarely applicable to the facts in the present case and it has been held by the Court that when there is a violation of an order of injunction granted by the Civil court, or when something has been, done in disobedience of such order of injunction, it is the duty of the court as a matter of judicial policy to undo the wrong done in disobedience of the court's order and the power to enforce the order of injunction by ordering police aid is available under Section 151 of

the CPC.

11. In my opinion, the petitioner does not stand to gain anything by lodging an FIR and filing application under Order XXXIX, Rule 2A of the Code and / or by seeking restoration of possession. Considering that the order of temporary injunction has already been passed in favour of the petitioner, the Court is not helpless to implement its own orders by taking resort to the provisions of Section 151 of the Code. The Court cannot be a mute spectator to the disobedience of its order and has ample powers to undo the injustice done. A party, who has suffered the order of injunction, cannot be permitted to disobey the order with such impunity and the beneficiary of the order, cannot be made to run from pillar to post.

12. Considering the manner in which the respondents have disobeyed the order of the trial Court below Exh.5 dated 06.05.2021, the trial Court is directed to decide the application under Order-XXXIX, Rule 2A for disobedience of the order within a period of four weeks from today. As regards the prayer for restoration of the possession is concerned, the impugned order dated 20.07.2022 is hereby quashed and set aside. The respondents are directed to handover the possession of the suit property within a period of two

weeks from today. In event any obstruction is being caused by the respondents, necessary police aid to be granted to the petitioner for taking possession of the suit property.

13. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)

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