

MHAU020018522024



ORDER BELOW EXH. 11 IN R.C.S. No. 417/2024

(Sk. Nasim Vs. Sayed Najir)

The plaintiff filed application for status quo against the defendant.

2. It is the contention of the plaintiff that the matter is fixed for filing say and written statement. Already sufficient time have been given to the defendant. The plaintiff has filed suit for perpetual injunction against defendant. The plaintiff has mentioned that defendant ought to have demolish the wire fencing of suit property on southern and eastern side. The documents are filed alongwith list Exh.4 i.e. photograph, map of village, sale deed and gift deed etc..

3. It was pointed to the court between the date of registration of suit and matter coming before this Court, that defendant in collusion in police authority played mischief and bulldozer etc. trying to mischief and by bulldozer tried to create passage into some extent, damage the compound wall. The photograph of compound wall of wire fencing are already on record. The defendant on 01.05.2024 obstruct the peaceful possession of plaintiff over the suit property, even with knowledge

that suit is pending before this Hon'ble Court, and again create road. Hence, defendant is to be directed to maintain status quo in the interest of justice, so that the property of the plaintiff is protected. Hence, prayed to allow the application.

4. The defendant appeared and filed their say below Exh.12 and opposed the application stating that temporary injunction application, which required to be heard and deciding on merit, after giving opportunity to other side.

5. The court has refused ad-interim exparte injunction and issued notice to the defendant. There is no such strong change in circumstances. The documentary proof is required to be brought on record.

6. It is denied that present defendant is creating new road from the land of plaintiff. What exactly the status and nature of the road of suit property is not before the court, the plaintiff can take undue advantages of this uncertain fact. Which can create future complications. There seems no urgency or prejudice to the interest of the plaintiff. Merely, on the apprehension of the plaintiff no any blanket order can be passed, which can result in the unwarranted restrictions over the defendant, without any supporting evidence. The necessary documents are filed on record. Therefore, application deserves to be rejected.

7. Hd. respective parties. Ld. Advocate of the plaintiff argued that the defendants are trying to dispossess the plaintiff

creating new road. On 01.05.2024 defendants obstructed peaceful possession of plaintiff over the suit property. In such circumstances, prayed to grant status-quo till filing the written statement of defendnats. On the contraray, Ld. Advocate of the defendnats argued that he has filed documnets alongwith photographs which shows that there is a road and no fencing over the road. He further argued that all the fact and evidence are not before the court. Therefore, the order can create future complication and unwarranted restrictions to the defendnat. Hence prayed to reject the application.

8. Perused the application and record of the case. The plaintiff has filed document alongwith photographs on record which shows that plaintiff is the owner of Gut No.65. Further, perusal of photograph shows that there is fencing over the road. The plaintiff admitted the fact that Gut No.65 is of defendant. It is contention of the plaintiff that defendant may dispossess the plaintiff by creating new road. On the contrary, defendant filed document and photos on record. The Ld. Advocate of the defendant argued that he has filed sale deed of 2020, wherein on southern portion the road shows, further he has filed photograph on record, which he is submitted that there is no fencing over the road. Therefore, there is no question to demolish or create new road. The plaintiff as well as defendant are filed document and photograph on record. Both parties have not filed certificate u/sec. 65-A of the Evidence Act to support the photograph. Perusal of photos filed by the plaintiff which shows the fencing to the road. On the contrary, photos filed by the defendant shows that there is

no fencing wall to the road. In the present matter, the court is unable to understand the exact situation of the suit property. The contention of the plaintiff and the defendant required supporting evidence. Therefore, under these circumstances, I pass following order:

ORDER

The application Exh. 11 is rejected.

Aurangabad.
Date - 30/04/2024.

(G. D. Gurnule)
20th Civil Judge, Junior Division,
Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer : G.K. Jadhav

Court : G. D. Gurnule JMFC (Court
No. 20), Aurangabad.

Date of Order : 02/05/2024

Order signed by the
presiding officer on : 02/05/2024

Order uploaded on : 02/05/2024