

REGULAR CIVIL SUIT NO. 58 OF 2020**ORDER BELOW EXH. 5.**

1. In this application, the plaintiff claims the relief of injunction restraining the defendants from dispossessing the plaintiff from the suit-property i.e. Shop No. 13 and 14, First Floor, Gauri Royal Flat And Shops, Plot Nos. 1, 2 and 3, Revenue Survey No. 352 Paiki Open Plot, Taluka: Jagadia, District: Bharuch till the final disposal of the suit. The case of the plaintiff is that the defendant has sold the suit-property by way of registered sale-deed to the plaintiff on 16-03-2019, and since then, the plaintiff is in physical possession and occupation of the suit-property. Even then, the defendant and his men are trying to dispossess the plaintiff forcibly from the suit-property. Therefore, the plaintiff has brought the present suit along with the present application for the relief as stated earlier.

2. The defendant has filed his reply and resisted this application. According to the defendant, he had offered sale of flats and obtained home loan. It is also stated that he had obtained 'No Objection' and sold some of these flats and shops. It is also stated

that, if the plaintiff is making any statement with regard to that aspect, then the plaintiff is making a false statement. It is also denied that the defendant is forcibly trying to dispossess the plaintiff from the suit-property.

3. Perused the record and proceedings of this suit. Heard learned Advocate for the plaintiff and learned Advocate for the defendant. Considered the documents relied upon by the parties.

4. On perusing the averments in the application, it is very much clear that the plaintiff claims his right to possession on the basis of the registered sale-deed at Mark 3/1 alleged to have been executed by the defendant. I have perused this sale-deed. It transpires that the sale-deed is in respect of the suit-property and it purports to have been executed by the parties to the present suit. The sale-deed clearly states the transfer of possession in favour of the plaintiff. It is pertinent to note that the allegation that the defendant has executed the sale-deed in question in favour of the plaintiff is a material allegation and the defendant is required to deal with it specifically and he cannot deny it evasively. Moreover, even he denies it, he has to answer the point of substance. At this

stage, it would be appropriate to take into consideration the following principle laid down by the Hon'ble Supreme Court of India in the case of ***Gian Chand and Brothers Vs Rattan Lal, (2013) 2 SCC 606:***

“22. The said aspect can be looked from another angle. Rules 3, 4 and 5 of Order VIII form an integral code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. It is obligatory on the part of the defendant to specifically deal with each allegation in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance. It is clearly postulated therein that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiffs but he must be specific with each allegation of fact (*see Badat and Co., Bombay v. East India Trading Co. AIR 1964 SC 538*).”

5. As against this, in the present case, the defendant has not dealt with the allegation of execution of sale-deed specifically. On the contrary, he has given a very evasive reply. In fact, it is not clear from the averments in the written statement as to what is the defence taken by the defendant. Let it be clearly stated that it does

not appear from the written statement that the defendant has denied that the so-called sale-deed is executed by him. It is not also the averment that, if it has been executed, it has been executed by practicing fraud or other means upon him. Under these circumstances, there is a reason to believe that the defendant has executed the sale-deed in favour of the plaintiff whereby the possession of the suit-property has also been handed-over to the plaintiff. As a result, the plaintiff has a strong *prima facie* case in his favour. Now, when the plaintiff is in possession of the suit-property, it would be the plaintiff who would have to face greater hardship than the defendant if the injunction is not granted in favour of the plaintiff. Thus, balance of convenience is in favour of the plaintiff. Moreover, again, it would be plaintiff only who would have to suffer such irreparable loss which cannot be compensated in terms of money if the injunction is not granted in his favour. Thus, all the three factors are in favour of the plaintiff.

6. Considering the aforesaid discussion, I am of the view that the plaintiff is entitled to the relief of temporary injunction. As a result, I pass the following order:

ORDER

1. The application is allowed.
2. Till the final disposal of the suit, the defendant and / or others on his behalf are restrained from dispossessing the plaintiff from the suit-property.
3. No order as to costs.

Pronounced in the Virtual Court today i.e. 28th August, 2020.

Place : Jagadia

PRIYADRSHINI PINAKIN MOKASHI
Principal Senior Civil Judge,
And, Additional Chief Judicial Magistrate.

Date : 28-08-2020

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