

ORDER BELOW EXH. 57

1. I have perused the application and say and heard counsels of the parties. I have also carefully perused the written notes of arguments at Exh. 76. Record perused.

2. On the basis of pleadings of the parties I have framed following issues for determination of this application, which I answer them along with my reasons and findings thereon, as follows:

Sr. No.	Issues		Findings

01.	Whether prima facie case is made out by plaintiff?	..	No.
02.	Whether balance of convenience lies with plaintiff ?	..	No.
03.	Whether plaintiff is going to suffer inconvenience or irreparable loss or injury in case application for temporary injunction is disallowed?	..	No.
04.	What Order ?	..	Application is rejected.

REASONS

3. **AS TO ISSUE NOS. 1 to 3:-**

In this application, the plaintiff alleges that he has filed the suit for declaration of ownership and permanent injunction.

However, it is alleged that during pendency of suit the defendant no. 2 sold out suit property to Yogesh Omprakash Agrawal (Defendant no. 15) on 26.06.2023 having Sale-deed no. 4866/2023. It is also alleged by the plaintiff in this application that the plaintiff has made out some legal points in the suit and the trial would take some time, but the defendant no. 2 created right of third party and hence temporary injunction is sought restraining defendant no. 15 from creating third party interest.

4. The defendant no. 15 submitted his say to this application at Exh. 72. In the say, the defendants have denied the contentions of plaintiff. However, it is submitted by the defendants in the say that previously the plaintiff had filed temporary injunction application at Exh. 5 against defendant nos. 1 and 2 which was rejected by the court. The defendants also contend that there is no cause of action for filing the present application and that the plaintiff has no concern with the suit property. It is also alleged by the defendants that defendant no. 15 is the owner and possessor of the suit property on the basis of Sale-deed dated 26.06.2023.

5. After perusing the pleadings and documents filed on record, it appears that as per Sale-deed dated 26.06.2023 at Sr. No. 4866/2023 prima facie the defendant no. 15 has purchased the suit property. I have gone through the order of the predecessor of the court passed on Exh. 5 dated 13.10.2021 whereby the

application of plaintiff was rejected. I have perused the documents filed by plaintiff below list Exh. 75. However, from letter dated 05.03.2024 issued by District Superintendent of Land Record, Pune it prima facie appears that plaintiff was directed to apply before competent Revenue Department and hence the application was disposed off. In the present application the plaintiff has made bare allegations of alleged alienation or third party interest at the hands of defendant no. 15 without any cogent evidence in this regard. It seems to me that without proper pleadings and evidence in this regard the plaintiff is asking for temporary injunction. The plaintiff lost sight of the fact that temporary injunction is granted on the basis of cardinal principles of law i.e. prima facie case, balance of convenience and irreparable loss. In the present case the plaintiff has not made out any prima facie case, therefore, question of balance of convenience and irreparable loss does not arise. In addition to this the learned counsel for defendants Ms. Nazneen Attar argued that Exh. 5 was rejected and Civil M.A. is pending and in that appeal stay is refused. It is pertinent that the previous temporary injunction application at Exh. 5 was rejected. That application was with a prayer not to alienate or create third party interest in the suit property. As such I am of the considered view that since the pleadings in the present application are not making out a case which needs consideration and the plaintiff failed to make out prima facie case in light of above discussion, therefore, present application is liable to be rejected. On the contrary, if the temporary injunction is granted then plaintiff may

misuse it against the defendants. So, I answer issue nos. 1 to 3 in the negative.

6. AS TO ISSUE NO. 4:-

Relief of Injunction is an equitable relief. In the facts and circumstances of present case, I do not want to exercise my discretion in favour of plaintiff. So, I answer issue no. 4 accordingly. Resultantly, I pass following order.

ORDER

- I. Application Exh. 57 is hereby rejected.
- II. Costs in main cause.

Dt. 21/02/2025

(Md. Taher Bilal)
Civil Judge J.D., Saswad.

Order Exh. 57

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***R.C.S. No. 58/2021
Baban Vs. Sakhubai
MHPU130001812021***

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : Nitin M. Shinde, Stenographer, (Grade III)

Court Name : Shri. Md. Taher Bilal
Civil Judge Jr. Division, Saswad.

Date of Order : 21.02.2025

Order signed by presiding officer on : 21.02.2025

Order uploaded on : 21.02.2025