

MHLA020003342020



ORDER BELOW EXH.05 IN RCS NO.54 OF 2020

[Chikkanarayakhali Dorayya Krushnayya Shetty Vs Mujib Shabbir Sayyed and 1]

Plaintiff has filed this application to grant temporary injunction against defendants from disturbing his possession over the suit property till disposal of this suit.

02. It is the case of plaintiff that he is owner of plot No. 4 situated at Gat No. 79 at village Pakharsangvi (hereinafter referred to as the suit plot) which he purchased from Ankush Bhagwanrao More through registered Sale Deed bearing day book No. 1028/1986 dated 28.02.1986. The plaintiff is in legal possession over the suit plot as an owner. On 29.11.2019, he had been to the suit plot for observation. At that time, defendant No. 1 was trying to encroach over suit plot. Therefore, plaintiff lodged complaint with MIDC Police Station. Thus, defendant No. 1 ran from the spot. Thereafter, on 07.01.2020, defendant No. 1 again tried to encroach over the suit plot. On the same day, plaintiff again lodged complaint against defendant no.1. Thereafter, defendants in collusion with each other came to the suit plot and threatened the plaintiff to dispossess him. He requested them not to interfere and obstruct over his peaceful possession of the plaintiff, however, defendants with their common intention threatened plaintiff. Therefore, plaintiff prayed to grant temporary injunction in his favour.

03. Defendant No.1 filed written statement at Exh. 31. He opposed the application on the ground that plaintiff, Shivling Gauda and Sudhakar Kulkarni were owners and in possession of plot Nos. 1, 2 and suit plot i.e. 4 from Gat No. 79 situated at Pakharsangavi. In the year 2015, plaintiff, along with Shivling Gauda and Sudhakar Kulkarni sold plot No. 1, 2 and suit plot to defendant No. 2 vide registered Sale Deed bearing day book No. 2792/2015 dated 16.07.2015. The suit plot bears Gram Panchayat House No. 6429, village Pakharsangvi. After execution of Sale Deed by plaintiff in favour of defendant No. 2, he applied for mutation and accordingly the name of defendant No. 2 is mutated in 8A extract of Grampanchayat.

04. Defendant further contended that in the year 2017, defendant No. 2 sold the suit plot to defendant No. 1 through registered Sale Deed bearing day book No. 729/2017 dated 10.03.2017. On the day of Sale Deed itself, defendant No. 2 handed over the possession of suit plot to defendant No. 1. Thereafter, defendant No. 1 applied for mutation and accordingly the name of defendant No. 1 was entered into 8A extract of Grampanchayat. After execution of sale deed in favour of defendant No. 2 in the year 2015, the possession of suit plot is handed over to him. The plaintiff is in no way concerned with the suit plot. He is neither owner nor in possession of the suit plot. Defendant No. 1 is enjoying the possession of the suit plot being the owner of it. The plaintiff has suppressed real facts of execution of Sale Deed in favour of defendant No. 2. He has not come with clean hands before Court. Therefore, he is not entitled to

injunction. Thus, he prayed to reject application.

05. Perused the application. After considering the rival pleadings and arguments, following points arise for my determination, the answers to which along with reasons are as follows -

Sr.No	Points	Findings
1.	Whether plaintiff has <i>Prima-facie</i> case in their favour?	No.
2.	Whether balance of convenience lies in favour of plaintiff ?	No.
3.	Whether plaintiff will suffer irreparable loss if the application is not allowed?	No.
4.	What order ?	Application is rejected.

REASONS

06. The plaintiff has filed following documents- Certified copy of sale dated 28.02.1986 at Exh. 16. Tax receipts at Exh. 19 to 21, Photocopy of Sale Deed dated 12.03.1986 and 23.07.1983, 8A extract of Grampanchayat House No. 6429 for year 2005-06, Tax Receipts for year 2005-06, suit plot photo, Photocopy of Sale Deed 2792/2015 and 729/2017, complaints filed with police station. On the other hand, defendant no.1 has filed certified copy of Sale deed 2792/2015 and 729/2017.

Arguments advanced-

07. Heard learned Advocates for plaintiff and defendant No.1. Defendant No.2 failed to argue despite availing sufficient

opportunities, hence, the application proceeded without his arguments. Perused written notes of arguments filed by defendant No.1 at Exh.54. Plaintiff's learned advocate has argued as per his case. He submitted that plaintiff does not know about the execution of Sale Deed. Had he known about the execution of sale deed, he would have come with the case that the said Sale Deeds are forged. Plaintiff has proved his *prima facie* case and the balance of convenience also lies in his favour. Thus, if the application is not allowed, he will suffer irreparable loss that can not be compensated in terms of money. Hence he prayed to allow the application and thereby injunct the defendants causing obstruction and interference to his peaceful possession over the suit plot till final disposal of suit. On the other hand, defendant No.1 has argued that the title of plaintiff is seriously disputed and under the cloud. Therefore, no *prima facie* case is made out to allow this application.

As to Point Nos. 1 to 3 -

08. As all the points are interlinked, they are discussed together to avoid repetition of facts. The relief of injunction is equitable and discretionary relief. The plaintiff is claiming that he is owner and in possession of the suit plot. The Sale Deed dated 28.02.1986 reveals that plaintiff purchased suit plot in the year 1986. 8A extract and tax receipts on record show that plaintiff was paying taxes of the suit plot till the year 2011.

09. The defendant has contended that in the year 2015, plaintiff sold the suit plot to defendant No. 2. He has produced

Sale Deed executed in the year 2015. The sale deed reveals that the person namely Shivling Gauda Karabasangauda Basavgangauda along with Sudhakar Kulkarni and Chikkanayakahali Doyadda Krushna Shetti executed Sale Deed in favour of defendant No. 2 in respect of plot Nos. 1, 2 and suit plot.

10. To prove his possession, plaintiff produced tax receipts till the year 2011 and relied on photographs which are produced on record. The photographs reveal that the name plate of plaintiff is on the open plot. It is pertinent to note that only photographs cannot show the possession over the suit plot. Moreover, plaintiff has not produced any tax receipt which was paid by him after the year 2011.

11. On the other hand, defendant has produced Sale Deed executed in the year 2015 in favour of defendant No. 2. The Sale Deed reveals that plaintiff along with other two persons executed Sale Deed along with suit plot in favour of defendant No. 2. Thereafter, another Sale Deed of the year 2017 reveals that defendant no. 2 executed it in favour of defendant No. 1. The 8A extract shows that defendant is in possession of the suit property since 2015.

12. The record shows that the suit is filed in the year 2020 and defendant has filed their Written Statement in the year 2023. Thereafter, the plaintiff carried out amendment in his name only. Defendant raised serious doubt over the title of the plaintiff by producing Sale Deed and the same is pleaded in his written statement. He has specifically pleaded that plaintiff along with

Shivling Gauda and Sudhakar Kulkarni sold plot Nos. 1, 2 and suit plot to defendant No. 2 vide registered Sale Deed bearing day book No. 2792/2015 dated 16.07.2015. The plaintiff came to know this fact after filing of Written Statement by defendant. Thereafter, plaintiff neither challenged the Sale Deed executed in the years 2015 and 2017 nor did he plead any specific facts regarding execution of it.

13. Defendant No.1 has relied upon the following judgments of Hon'ble Supreme Court *Anatula Sudhagar Vs. P. Bushireddy* AIR 2001 SC 2033, *Jharkhand State Housing Board Vs. Didar Sing* (2019) 17 SCC 692, *RBANMS Educational Institute Vs. B. Gunshekhar*, AIR 2025 SCC 2065, herein Hon'ble Supreme Court has time and again held that the suit for simplicitor injunction is not maintainable when the title of property is seriously disputed or under cloud. I have considered the ratios of above cited cases while deciding this application. In this case, defendant came with the case that plaintiff executed Sale Deed in favour of defendant No. 2 and defendant No. 2 executed Sale Deed in favour of defendant No.1 in respect of suit plot. *Prima facie*, it has come on record that plaintiff is not owner of the suit plot. Therefore, the argument of learned advocate of plaintiff does not survive in the eyes of law.

14. The defendant has produced sale deeds which show that defendant No. 1 is legal owner of the suit plot. The contents of Sale Deed reveals that plaintiff along with other two persons handed over the possession of suit plot to defendant No.2 and

defendant No. 2 handed over it to defendant No. 1. They have also produced 8A extract on record to show that defendant No. 1 is in possession of the suit plot. This goes to show that the plaintiff has not come with the clean hands before this Court. Thus, the equitable relief of interim injunction cannot be granted in favour of plaintiff. Considering the above discussion and the fact that the title and possession of plaintiff are under cloud, plaintiff has failed to prove *prima facie* case in his favour.

15. As stated above, the plaintiff has failed to prove *prima facie* possession over the suit plot. On the contrary, defendant has produced sufficient evidence that defendant No. 1 is legal owner of the suit plot and he is in possession of the suit plot. Therefore, if this application is rejected, no prejudice will be caused to plaintiff. However, if it is allowed, the defendants will suffer irreparable loss. Thus, the balance of convenience lies in favour of defendants. Hence, I record my findings to point Nos. 1 to 3 in the negative and in order to answer point No. 4, I proceed to pass following order-

:- Order :-

1. The application is rejected.
2. Parties to bear their own costs.

Date : 20.08.2026
Place : Latur.

(A. K. Wagh)
3rd Jt. Civil Judge Junior Division,
Latur.