

MHAH130007842022



BEFORE THE DISTRICT JUDGE 2 NEWASA
DISTRICT : AHMEDNAGAR

REGULAR CIVIL APPEAL No. 31/2022

Raju @ Rajendra Ratnakar Waghmare, ..Appellant

Vs.

Chandrakala Rajaram Kharat, & Ors. .Respondents

ORDER BELOW EXH 5

(Date :- 16-02-2023)

1] This is an application filed by the appellant /original plaintiff for temporary injunction to restrain the respondents/ original defendants from alienation of the suit property by any mode and creating encumbrances over the suit property.

2] The application has been resisted by the respondent No.1 by filing say at Exh.14.

3] The respondent No.2 and 3 served with the notice,but did not appear. Hence matter proceed ex parte against them.

4] Heard Shri R.R. Navle, advocate for the appellant/original plaintiff and Shri Bharat Varma, advocate for respondent No.1/ original defendant No.2.

5] Considering the rival contentions of the parties, the following points arise for my determination and I have recorded my findings thereon for the reasons given as under:

Sr.No.	Points	Findings
i)	Whether the appellant/original plaintiff has proves the triple test of prima-facie case, balance of convenience and irreparable loss for granting of temporary injunction?	Proved
ii)	What order?	As per final order.

AS TO POINT NO.1

6] Shri R.R.Navleadvocate for the appellant/original plaintiff has submitted that the plaintiff had filed Reg. Civil suit No. 287/2011 for declaration , re transferred of suit property and perpetual injunction against defendants. The trial Court has granted the temporary injunction and it was in existence till decision of the suit. The trial Court has dismissed the suit. The appeal is continuation of the suit. He submitted that there is prima facie case and balance of convenience in favour of the appellant/plaintiff. Therefore, if temporary injunction is rejected, then the respondent/defendants will alienate the suit property

and the purpose of filing the appeal will be frustrated. Hence, he urged to grant the temporary injunction till decision of the appeal.

7] As against Shri Bharat Varma Advocate for respondent No.1/original defendant No.2 has submitted that present application is not under order 41 rule 5 of the Civil Procedure Code but it is under rule 1 and 2 of the order 39 of the Civil Procedure Code. The appellant/original plaintiff has failed to prove the ingredients for granting the temporary injunction. He submitted that appellant/original plaintiff has not placed on any material to show prima-facie case and balance of convenience in his favour. He submitted that the learned trial Court had granted the temporary injunction application on the basis of unregistered document Exh.121 on the anticipation that plaintiff will proved the said document in evidence. He submitted that said document has not been proved by the plaintiff and thus there is no prima-facie case and balance of convenience in favour of plaintiff. He submitted that this is not decree of partition. Hence, application does not come within order 39 of the Civil Procedure Code. Hence, he urged to reject the application.

8] After perusing the pleading of the parties, it shows that 0 H.11R area in Gat No.18/1 of village Handi Nimgaon, Tal.Newasa Dist.Ahmednagar is the subject matter of the suit property. Plaintiff has filed the suit for declaration, re-transfer and perpetual injunction against the defendants.

According to plaintiff, he had taken loan of Central Bank of India. Plaintiff was having Ice Factory in Gat No.18/1. He was searching private money lender for taking loan. He came to know that defendants give private loans and for that purpose, they gets the sale deeds of fields executed from the borrowers. Therefore, plaintiff demanded Rs. 5,00,000/- from defendant No.1 and defendant No.4 was also present there. Defendant No. 1 and 4 shown their readiness to give loan to the plaintiff but they told that plaintiff will have to pay interest at the rate of 3% p.m. and he will have to execute nominal sale deeds as security in respect of his 40 R land in Gat 18/1 situated at Newasa Phata and plaintiff will remain in actual possession of field. Defendant No. 1 and 4 agreed to pay Rs. 5,00,000/- to the plaintiff in three installment i.e. Rs. 3,00,000/- on the day of execution of sale deed and Rs. 1,00,000/- each in two installments within 10 to 12 days. Defendant No.1 and 2 asked that sale deed will have to be executed in the name of defendant No. 2 and 3 . Plaintiff has accepted all conditions of the defendants and asked them when they will pay the amount.

9] According to plaintiff, after fixing of the money lending transaction between them sale deed came to be executed on their say. Plaintiff asked defendant No.4 that he is getting sale deed executed from him but what will be the evidence that he will re convey the property to him. Therefore, defendant No.4 gave him in writing on stamp paper that he will re-transfer the sale deed. Accordingly, on 30/12/2000, defendant No.4 on behalf

of defendant No.2 and 3 gave in writing on stamp paper regarding Rs. 5,00,000/- and about interest of 12 months i.e. Rs. 1, 80,000/- and gave assurance to re-transfer of sale deed. According to plaintiff, defendant No.4 kept xerox copy of stamp paper with him and gave original to the plaintiff. Thereafter, on 06/01/2000 and 10/1/2000, defendants gave Rs. 1,00,000/- each, to the plaintiff. Though it is mentioned in sale deed that possession is given, but the plaintiff was in actual possession of entire 40 R property. Defendants were not in possession of 40 R or 11 R land in Gat No.18/1. According to plaintiff, he repaid the outstanding loan amount to the Bank. Thereafter, on 22/1/2002 he returned Rs. 5,00,000/- and interest thereon i.e. Rs. 1,80,000/- total Rs.6,80,000/- to defendant. But after receiving amount, defendants demanded more amount of interest and threatened that sale deed will be re-executed on paying more interest amount other wise Rs. 6,80,000/- will not be returned. Therefore, mediator tried to give them understanding. Hence, they agreed to re-transfer sale deed in respect of 29 R area out of 40 R property and they agreed to re-execute sale deed of remaining 11 R area after receiving remaining amount of interest. Accordingly, on 22/01/2002 they re-executed sale deed in respect of 29 R area as per government valuation in the name of plaintiff. According to plaintiff, after receiving notice, defendant demanded interest amount through mediator. As plaintiff had returned entire amount along with interest of 1 year but interest of 20 to 22 days were due and he was ready to pay it, but defendant refused to accept it.

10] According to plaintiff, on every year he visits to defendants and asked them to re-execute sale deed of 11R land but defendant No.1 avoided to do so. Defendant No.4 also avoided to do so. According to plaintiff, his son was suffering from bone cancer. When he obtained 7/ 12 extract , he came to know, that defendant No.3 transferred the land in the name of defendant No.2. Therefore, on 31/12/2010, plaintiff sent letters by registered post to all defendants and asked to re-execute sale deed of remaining 11R area. Plaintiff has returned all amount of defendants with interest. Even after receiving letters, defendants did not reply. Therefore, on 25/1/2011, plaintiff sent notices to defendants by registered post through his advocate and asked to re-transfer sale deed and intimate prior to 8 days as to when they will re-execute sale deed.

11] According to plaintiff, after receiving notices, defendants demanded Rs.1,00,000/- through mediator. As plaintiff had returned amount along with interest of one year. But 20 to 22 days delay was taken place, therefore plaintiff had expressed his readiness to pay interest of the said period. But defendants refused and threatened to sell suit property to any other person. Hence, issued public notice in newspaper, stating nobody should enter into transaction with defendants regarding suit property. However, defendant on 28.02.2011 has given false reply to the notice. According to plaintiff, still suit property is in his possession. But only 7x12 extract bears the name of defendants. Therefore, defendants are trying to alienate suit

property. Hence, filed the suit which is dismissed .

12] According to defendant, the transaction between plaintiff and defendant No. 2 & 3 is an outright sale. They had never agreed to re-convey the suit property in favour of the plaintiff. The defendants have denied the allegations made by the plaintiff in the plaint. The plaintiff had sold the subject of suit property for repayment of the loan obtained by him from the Central Bank of India. According to them, defendant No.2 and 3 were not able to cultivate the 40R land. Therefore, they decided to sell the said land. The plaintiff by pressurizing the defendants got executed sale deed of 29R on 22/1/2002. Now the suit property has acquired higher value. Therefore, the plaintiff has after thought filed the suit.

13] Considering the pleading of the both parties, it is not disputed that plaintiff has executed registered sale deed of 40 R land from Gat No. 18/1 in favour of the defendant Nos. 2 and 3 on 30/12/2000. The defendant No.2 and 3 have re executed sale deed of 29R land out of 40R land from Gat No.18/1 in favour of the plaintiff on 22/01/2002. Presently, the suit property is standing in the name of defendant No.2.

14] According to the plaintiff he had executed the sale deed dated 30/12/2000 in favour of defendant No.2 & 3 as security for the repayment of loan obtained by him from the defendants. According to plaintiff, the defendants have agreed to

re-convey the property in his favour after repayment of debt by him. The defendant No.4 has executed agreement of re-conveyance in favour of plaintiff on 30/12/2000 on behalf of the defendant No.2 & 3 on stamp paper.

15] It is settled law that appeal is continuation of suit. The First Appellate Court is last fact finding Court. Therefore, while deciding the appeal the evidence placed on record by both parties, has to be re appreciate. It is not disputed that plaintiff has executed sale deed of 40R land in favour of the defendant. According to plaintiff, as per agreement, defendant would have to be re-convey the sale deed by accepting the loan amount. Plaintiff has re-paid amount. However, defendant No.2 executed the sale deed of only 29 R land out of 40R land in favour of plaintiff on 22/1/2002. Therefore, prima-facie, it can be said that defendant had agreed to re convey the sale deed of suit property in favour of the plaintiff. According to plaintiff, the defendant accepted the payment but claimed excess interest on the said amount. Thus execution of sale deed of 29 R land out of 40 R land shows that there is prima-facie case and balance of convenience is in favour of plaintiff. According to plaintiff, defendants are intending to alienate or transfer the suit property. In such circumstances, if temporary injunction is not granted till decision of appeal then the purpose of filing the appeal will be frustrated. Admittedly, the trial Court has granted temporary injunction from alienation of suit property by the defendant till decision of the suit. When appeal is continuation of the suit,

then it is necessary to restrained the defendant from alienation of suit property by any mode or creating encumbrances till decision of appeal. At the most, temporary injunction can be granted for the specific period on certain terms and condition. In the light of above reasons and discussion, I hold that there is prima facie case and balance of convenience in favour of plaintiff. In such circumstances, if the temporary injunction is rejected, then defendant will create third party interest or alienate the suit property, then certainly appellant/plaintiff will suffer more irreparable loss. On the other hand, if temporary injunction is granted then defendant/respondent will not suffer irreparable loss. Hence, I answer point No.1 accordingly in the affirmative. In result, the application deserves to be allowed. Hence, I pass the following order:-

ORDER

1)	Application Exh.5 is allowed as under:
2)	The respondents are hereby restrained from alienating the suit property by any mode or creating encumbrances over it, till decision of the appeal or till six months from this order, which ever is sooner.
3)	Costs in cause.

Date :- 16/02/2023.

[G. B. Jadhav]
District Judge 2, Newasa.
Dist.Ahmednagar