

ORDER PASSED BELOW EXH.NO.5

1. Plaintiff is seeking temporary injunction u/o 39 rule 1 & 2 of C.P.C. against defendant restraining him from causing obstruction as well as creating third party interest with regards to of suit property till decision of suit.
2. According to plaintiff, he is the husband of defendant. Till today marital tie amongst is intact. The mother of plaintiff had purchased the entire block no.240 admeasuring 34 Acre 37 Guntha vide sale deed no.1976 on 17-06-1969. Deceased Ambabai was the mother of plaintiff. She was the owner of the entire block No. 240. The plaintiff is having four brothers. Ambabai was died on 01-07-2015. During her lifetime she gifted the entire block no.240 amongst her five sons. Each son had received 2 H 32 R land. As per mutation entry no.468, their names were mutated to the block no.240. It has been stated by plaintiff that, his two daughters are married and they are living at their matrimonial house since from their marriage. Meanwhile, son-in-law of plaintiff i.e. Sunil and Ganesh Gahal had started threatening to plaintiff to execute the sale-deed in their favour. However, plaintiff refused for the execution of the sale-deed in favour of the defendant.
3. It is further stated that, meanwhile, son-in-law of plaintiff threatened and made assault on the plaintiff for execution of the sale deed in their favour. On 16-12-2016 son-in-law of plaintiff forcibly took the plaintiff in the office of sub-registrar, Phulambri. They got executed the bogus sale-deed by threatening the plaintiff by using coercion and mussel power. Plaintiff had executed disputed sale-deed in favour of defendant without valid consideration.
4. In fact, at the time of execution of sale-deed the process to demonetisation was going on. Further, there were restriction to withdraw the amount for more than 24,000/- within the span of one

month. Overall alleged sale-deed is bogus and hallow in nature. No possession of suit property was transferred in favour of defendant. On 28-12-2016 plaintiff had raised objection for mutating the name of defendant in Tahasildar Office. Hence, considering the residence of plaintiff his son-in-law had threatened to plaintiff to withdraw the objection. For the said purpose plaintiff had filed complaint with Phulambri police station. Now, defendant is trying to create third party interest and trying to oust the plaintiff from the suit property. In such circumstances, if the persistent obstruction remain enforce then plaintiff would suffer irreparable loss which never compensated in terms of money. Lastly, plaintiff requested for granting temporary injunction against the defendant restraining them from creating third party interest as well as from causing obstruction at the hands of the defendant.

5. Defendant appeared and filed her written statement at Exh.14. She admitted the relationship as well as nature of property. However, defendant negated the fact of oral gift and allotment of suit property by Ambabai to her five sons during her lifetime. In fact there was meets and bounds partition amongst the five sons. Thereafter, mutation entry took place and the names of plaintiff and his brothers were recorded to the block no.240 [to extent of 2 H 32 R each]. Meanwhile present plaintiff had sold out 81R agricultural land vide sale deed no.2132/2016 to the present defendant. Meanwhile plaintiff had filed false and bogus application to the revenue authorities and raised objection for the mutation of defendant.
6. Overall, theory of the plaintiff is baseless and false one. They have never threatened to plaintiff. Plaintiff is not having any locus to challenge the alleged sale-deed executed by the plaintiff in favour of defendant. At the time of purchase of suit property plaintiff had received the possession from the plaintiff. Therefore, question of

dispossession of plaintiff nowhere arises. Plaintiff materially suppressed the four boundaries of suit properties. Overall, plaintiff is not approached before the court with clean hands. Therefore he is not entitled for the equitable relief as prayed for. In such circumstances, temporary injunction application is deserves to be rejected.

7. Considering the rival contention of both parties following points arises for my discussion. I am recording my findings thereon with the reasons as follows.

<u>NO</u>	<u>POINTS</u>	<u>FINDINGS</u>
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(1)	Whether plaintiff is having prima faice case ?	Negative.
(2)	Whether plaintiff prove the balance of convenience lies in his favour ?	Negative.
(3)	Whether plaintiff prove that he would suffer irreparable loss if injunction is not granted ?	Negative.
(4)	Whether plaintiff is entitled for the temporary injunction as sought ?	Negative.
(5)	What order ?	Application is rejected.

REASONS

AS TO POINT NOS.1 TO 5

8. Point nos.1 to 5 are interlinked with each other. Therefore, those are discussed altogether for sake of brevity.
9. Heard, both the Ld. Advocate at length. Ld. Advocate for defendant filed the written notes of argument to support their application.
- 10.Both parties are admitted the nature of suit property as well as execution of the sale deed by the plaintiff in favour of defendant. The fact in issue and real controversy amongst the parties is touching to the crux of the nature of the transaction amongst the parties. According to the plaintiff sale deed is bogous and fictitious. On the contrary according to defendants, she had paid entire consideration

amount to the plaintiff and got executed the out and out sale deed from the plaintiff.

11. I have gone through the documents on record, mutation entry no.291 shows that, the mother of plaintiff i.e. Amababai had purchased 34 A 37 G agricultural land for consideration of Rs.4,000/- on 07-06-1969, 7x12 extract filed with the sale-deed shows that name of Harichandra, Narayan, Bhaurao, Raghunath, Ambabai and Malanbai was mutated to the 7x12 extract. As per the prima facie contention of plaintiff Laxmibai had orally gifted the entire block no.240 amongst her five sons. Meanwhile the plaintiff had executed the sale-deed in favour of defendant for consideration of Rs.4,75,000/-.
12. Further it has been asserted by the plaintiff that, he had executed the sale deed under the coercion and fraud played by the defendant. However, except oral contention no documentary evidence is filed by the plaintiff to believe his prima facie contention.
13. As per Section 54 of Transfer of Property Act plaintiff had executed the registration sale-deed in favour of defendant. Recitals of the sale-deed prima shows that, he received consideration from the defendant. Further, he had transferred the possession to the defendant at the time of execution of the sale deed. Whether plaintiff had received the consideration amount or not ?, whether sale-deed was false or bogus ? will be the part of merit . Findings on the said point can be recorded at the time of final adjudication.
14. Prima faice recitals of the sale-deed shows that, defendant had obtained possession of suit property at the time of execution of sale-deed. Overall there is parity of the contract amongst the plaintiff and defendant on the point of execution of the sale deed. At this stage, plaintiff is prima faice estopped from blaming the sale deed which was voluntarily executed by him in favour of his wife.

15.Plaintiff is seeking temporary injunction against the defendant on the point of alienation as well as obstruction. However, I did not found any prima faice case as well as balance of convenience in favour of plaintiff. In such circumstances, if injunction is granted to the plaintiff then defendant would suffer irreparable loss which never compensated in terms of money.

16.As per above discussion plaintiff prima faice failed to prove the existence of prima faice case, balance of convenience in his favour. In such circumstances, plaintiff is not entitled for the temporary injunction as prayed for. Hence, I record my findings to the point nos.1 to 4 in negative and proceed to pass following order.

ORDER

1. Application Exh. 5 stand rejected.
2. Cost of application would be cost in cause.

Date :- 08-01-2018.

Sd/-
(J. G. Pawar),
Civil Judge Junior Division,
Phulambri.

CERTIFICATE

I affirm that the contents of this PDF file Order are same, word to word, as per the original Order.

Name of the Stenographer : Miss. Manjushri S. Salve.
Court : Civil Judge Jr. Div. & J.M.F.C. Court, Phulambri.
Date : 08-01-2018
Order signed by the
presiding officer on : 09-01-2018
Order uploaded on : 10-01-2018