



COMMON ORDER BELOW EXH.- 05 & 24

In Regular Civil Suit No. - 15 of 2020

[CNR - MHAU120001532020]

Rangnath Vs. Patilba

[Passed Today on - 19th January 2023]

1. These applications are filed seeking injunction against the each other, in view of Order XXXIX Rule 1 and 2 read with section 151 of Code of Civil Procedure, 1908 (for short CPC).

Plaintiff's Claim:

2. That the property situated at Savarkheda (Old) Gut No.-23 ad-measuring 1 H 68 ares having four boundaries Towards East - Panjab Himmat Janjal and land in Gut No.-23, Towards West - Land of Nandkishor Navgire, Towards South - Chandrakalabai Rama Janjal and land of Gut No.-26, Towards North - Parasadi, this property is a subject matter of this application and (Herein referred as "suit property").
3. It is the contention of plaintiff that the father of plaintiff Vithoba Varule was owner and possessor of entire Gut No.-23. After his death he become owner and possessor of whole Gut No.-23. Thereafter, for fulfilling the need of family of plaintiff, he sold 2 H 40 ares land to Chandrakalabai Rama Janjal, 2 H 20 ares land to Shivaji Pundlik Janjal and 1 H land Himmat Janjal by way of sale deeds. However, suit property till is in ownership and possession of plaintiff.
4. Plaintiff is age old person. Therefore, he is residing at Aurangabad with his son. He cultivates the land through laboures, that the defendant is arrogant person and is a member of Shivsena political party. Therefore, he has is nexus with Police Officers, Revenue Officers as well as with other political leaders. He has his land neighbourer to the suit property. He used to threat the plaintiff and willing to grab the suit

property at free of costs.

5. On 25.01.2020, plaintiff was in the suit property with his son. At that time defendant threatened him. On 21.02.2020, when plaintiff along with his son went in the field at that time also defendant threatened him. Hence, plaintiff has filed the suit and prayed temporary injunction in his favour and also prayed to reject temporary injunction to application for defendant.

Contentions of Defendant [Exh.-22]:

6. Defendant filed his written statement and say along with counter claim. He opposed the claimed of plaintiff. It is the contention of defendant that he is in possession of suit property. In the year 2007, plaintiff was in need of money for the purpose of marriage of his daughter. Therefore, he searched the purchaser to purchase his land. He approached towards the defendant and requested to him to purchase the suit property. Defendant also shown his willingness to purchase the suit property.
7. After negotiation, it was decided between plaintiff and defendant that defendant will purchase the suit property for consideration of Rs.30,000/-. Defendant has paid Rs. 20,000/- to plaintiff as a earnest amount. However, the land in Gut No.-23 is a tenancy land, therefore, it was agreed that after obtaining the necessary permission from the Ld. Collector Aurangabad, plaintiff will execute the registered sale deed of 1 H 40 ares land in favour of defendant. The remaining amount of Rs. 10,000/- will be paid at the time of execution of sale deed. The plaintiff has also handed over the possession of suit property to defendant.
8. On 20.12.2006, the plaintiff and defendant had executed affidavits before Ld. Tahsildar, Soygaon regarding the transaction. The

plaintiff has also executed agreement of sale in favour of defendant on 15.01.2008, on stamp paper of Rs.10/-. Thereafter, plaintiff has filed proceeding before Ld. Collector Aurangabad for the purpose of permission to sale the suit property. He also submitted affidavit and copy of agreement to sell along with other relevant documents. On 02.02.2009, plaintiff and defendant had also executed statements before Ld. Collector, Aurangabad. Thereafter, Ld. Collector, Aurangabad issued notice to plaintiff and requested to submit necessary documents. As plaintiff is residing at Aurangabad with his son, he has not submitted the relevant documents. The defendant personally visited to the Collector office and inquired about the matter. Thereafter, he time to time requested to the plaintiff to obtain permission to transfer the land for the purpose of execution of sale deed, but plaintiff stated to defendant that there is no need of worry, he has already handed over possession of suit property to him. As early as possible, he will execute the registered sale deed as agreed between them. Defendant fully relied on the plaintiff and not worried about the registration sale deed.

9. It is further contention of defendant that the plaintiff has suppressed the true and material facts to from this Court and not filed the suit for cancellation agreement to sell or declaration. Defendant is also old age person. By considering the above facts he prayed to reject the application of plaintiff and prayed to allow his application for temporary injunction.

Points for Determination:

10. In this background, I need to decide about the upcoming points. I have formulated the points and then recorded decisions about them. The basis of decisions is the reasoning, analysis and discussion worded hereunder.

Sr.No.	Points for determination	Decisions
1.	Who has established <i>prima facie</i> case, demonstrating that he has possession over the suit property?	... <u>Plaintiff</u>
2.	In whose favour balance of convenience tilts?	... <u>Defendant</u>
3.	Who would suffer irreparable loss with greater hardship, if injunction is not granted?	... <u>Plaintiff</u>
4.	Who has approached before the Court with clean hands?	... <u>Defendant</u>
5.	What order?	... <u>As Per the Operative Order.</u>

REASONS

As to Point No.-1:

11. The party applying and insisting for injunction must establish prima face case first. Doing so means to demonstrate that there is a serious question involved in which the Court must intervene into. It also needs to establish that its legal right is in danger. Moreover, the party seeking such equitable relief of injunction is governed by all the maxims of equity. It is expected that the party seeking such equitable relief must not suppress any facts or at least material facts. Another maxim mandates that the party seeking injunction must come with clean hands. Therefore, the claim of injunction is required to be examined through all such lenses of equity.
12. Both the parties have argued with respect to their pleading in addition to the defendant has filed written notes of argument which is also taken into consideration.
13. In this matter both the parties have claimed their possession over the suit property. Plaintiff has filed on record the copies of 7/12 extract of Gut No.-23 of village Savarkheda from which it appears that his name

is inserted in 7/12 extract of suit property. He has also filed on record the copies of revenue entries showing that he has sold the suit properties as pleaded in the plaint. On the other hand, defendant has filed on record the copy of agreement to sell executed between plaintiff and defendant. After perusal of the certified copy of agreement to sell, which is written on stamp paper of Rs.10/-, it appears that the agreement of sale executed between plaintiff and defendant. It also appears that consideration amount was decided Rs.30,000/- and defendant has paid Rs. 20,000/- as earnest amount to the plaintiff. It was also agreed between them the remaining amount paid by the defendant, when plaintiff will get the permission to sale the suit property.

14. Ld. advocate for defendant has relied on the judgment of **Hon'ble Bombay High Court between Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde**, wherein in **Para-09** held that, “.....at stage of temporary injunction Court can referred to documents which are produced on record without formal proof. At the time of trial Court has take into consideration the documents which are established in accordance with the provisions in the Indian Evidence Act and proved on formal proof....”.

15. I have gone through the above judgment, it appears from the above judgment that Court can referred the documents at the time of temporary injunction without formal proof. Therefore, the document filed by the defendant i.e. agreement to sell and affidavits are taken into consideration. But, it is not clear from the said copy of agreement to sell that plaintiff has handed over possession to the defendant. Therefore, it cannot be said that defendant is in possession of the suit property.

16. For showing the possession of defendant he has filed on record the affidavits of adjoining agriculturist showing that defendant is in

possession of the suit property. However, in the above judgment **Hon'ble Bombay High Court** has further held that in **Para-13** that, *“.....it is pertinent to note that the affidavit is not only source for the Court to record a finding regarding prima facie case, balance of convenience and irreparable loss. The Courts have to considered material on record in its entirety. The affidavits which are filed on record have to be read in consonance with the pleading of plaintiff, pleading of defendant document of sale, certification of mutation and other material which produced on record....”*.

17. Therefore, by considering the absence of delivery of possession in agreement to sell it can not be said that plaintiff has handed over possession to the defendant.
18. The Ld. advocate for plaintiff has relied on the judgment of **Hon'ble Supreme Court in Balramsingh Vs. Kelo Devi, Civil Appeal No.- 6733/2022, decided on 23.09.2022**. Wherein the **Hon'ble Supreme Court** set aside the judgment and order of Hon'ble High Court and judgment and decree of first Appellate Court. The Hon'ble Supreme Court dismissed the suit of original plaintiff for permanent injunction on the basis of unregistered agreement to sell. More so, in Para-05 of the judgment the Hon'ble Supreme Court has held that, *“....At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent injunction only, which was claimed on the basis of the agreement of sell dated 23.03.1996. However, it is required to be noted that the agreement to sell dated 23.03.1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence...”*.
19. I have gone through the above judgment, it appears that in the

cited judgment the plaintiff had filed the suit for simplicitor injunction. However, in this matter defendant has filed counter claim for specific performance of contract and injunction. Therefore, at this stage the above cited case law is not applicable to the present matter.

20. In view of the copies of 7/12 extract the possession of plaintiff over the suit property can not be ruled out. Therefore, there is a possibility that plaintiff is in possession of suit property. Hence, I have recorded my finding to Point No.1 in favour of plaintiff.

As to Point No.-2:

21. It appears from the copy of agreement to sell that plaintiff failed to execute sale deed in favour of defendant. It appears from record that necessary permission to sell the suit property is not obtained by the plaintiff from the Collector Office, Aurangabad. However, it can be said that plaintiff had intention to sale the suit property to defendant. The defendant has paid the earnest amount of Rs. 20,000/-. Therefore, it can be said that balance of convenience tills in favour of defendant. Hence, I have recorded my finding to Point No.2 in favour of defendant.

As to Point No.-3:

22. As discuss, earlier, the possibility of plaintiff is in possession can not be ruled out. Therefore, it appears that plaintiff will suffer irreparable injury if injunction is not granted in his favour. Hence, I have recorded my finding to Point No.3 in favour of plaintiff.

As to Point No.-4:

23. Ld. advocate for defendant has submitted that plaintiff has not come before this Court with clean hands. Hence, he has submitted that plaintiff is not entitled for equitable relief of injunction. For that purpose he relied on the judgment of **Hon'ble Bombay High Court between**

Mallappa Shivling Nandani Vs. Bhushan Prakash Risdud, 2016 (2) B C J Page No.52. Wherein the **Hon'ble Bombay High Court** in **Para-17** by taking reference of judgment of **Hon'ble Supreme Court** in **Dalip Singh Vs. State of Uttar Pradesh & Oths., 2010 (4) SCC 594** has mentioned that, *"....a litigant who attempts to pollutes the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final...."*.

24. He has also relied on the judgment of **Hon'ble Bombay High Court** in **Yashwant Laxman Pairkair Vs. Laxman V.Singhbal, 2010(1) BCJ Page No.-163.** Wherein it is held that *"....one who seek equitable relief should come with clean hands...."*.

25. He has also relied on the judgment of **Hon'ble Bombay High Court** between **Madhav Narayan Mujumdar Vs. Southern Knitting Work Pvt.Ltd., 1998 (2) BCJ Page No.-326.** Wherein in **Para-08** held that, *"....It is further to be seen here that, the relief to injunction is clearly in the discretion of the Court, Any person who approaches the Court for such a discretionary relief is under a duty to place before the Court full facts..."*.

26. In this matter also plaintiff has suppressed many material facts from this Court and has not approached to this Court with clean hands. Injunction is an equitable relief. Therefore, one who seeks equity must do equity. In this matter, it appears that plaintiff has suppressed the fact that there was agreement to sell executed between himself and defendant. He has also suppressed the fact that he himself and defendant has executed affidavits before the Ld. Tahsildar, Soygaon. Therefore, he has not come before the Court with clean hands. Hence, he is not entitled for equitable relief of injunction. Hence, by considering the equitable relief, the plaintiff is not entitled for injunction. Hence, I

have recorded my finding to Point No. 4 in favour of defendant.

As to Point No.-5:

27. For the relief of temporary injunction, the parties have to prove prima facie case, balance of convenience lies in their favour and if injunction is not granted, they will suffer the irreparable injury. In this matter both parties have failed to prove all three points in their favour. Hence, both parties are not entitled for injunction. Hence, I pass the following order -

OPERATIVE ORDER

01. The application of plaintiff for temporary injunction Exh.-05 is rejected.
02. The application of defendant for temporary injunction is Exh.-24 is also rejected.
03. No order as to costs.

Date : 19.01.2023.

[Amol B. Ingole]
Civil Judge J.D., Soygaon
[J.O. Code – MH03038]

CERTIFICATE

“I affirm that the contents of this [P.D.F.](#) file Order are same word to word, as per original Order”.

Name of Stenographer	:-	K. P. Dusane.
Court	:-	C.J.J.D. & J.M.F.C., Soygaon.
Date	:-	19.01.2023.
Order signed by presiding Officer on	:-	19.01.2023.
Order uploaded on	:-	20.01.2023.