

Regular Civil Suit No. 228/2020
Shaikh Fatru V/s. Indubai Banale & another.
CNR No : MHBI060021332020.

ORDER BELOW EXH-05

01. Heard the learned Adv. Shri. M.A. Osmani, for the plaintiff.
02. Read the plaint, application for temporary injunction, and affidavit filed in support of the application for temporary injunction.
03. Perused the documents. It has been submitted by the learned advocate for the plaintiff that, the present suit is preferred for the declaration of ownership and perpetual injunction. The learned advocate submitted that the property bearing Gat No. 29, total admeasuring 2 H. 84 R. out of which 80 R. situated at Pokhari, Tq. Ambajogai, Dist. Beed, is the subject matter of the present suit. The plaintiff being the power of attorney holder of Shaikh Mustafa has purchased 88 R. land out of Gat No. 41 from defendant no. 2 for the total consideration of ₹ 1,32,000/-, and accordingly agreement to sale was effected on 09/12/2003. The plaintiff further submitted that as the civil litigation in respect of the said property was pending before the civil court, it was mutually agreed between the parties that after the decision of the litigation the defendant no. 2 will enter into a registered sale deed. Thereafter, the defendant no. 1 has also effected a

contract of sale on 27/04/2004 in respect of 80 R. property in the name of the plaintiff. After the decision in the Regular Execution Petition No. 60/2003, the plaintiff has approached the defendant to enter into a registered sale deed, however, the defendants to do so. The defendants have also sold out the said property in favour of Govind Ranba by sale deed dated 01/08/2006. Thereafter, Govind has also sold out the said property to one namely Ramakant Raghunath Mane. The plaintiff further submitted that he is in continuous possession of the suit property. Hence, the plaintiff was constrained to file the present suit for declaration of ownership and perpetual injunction in the which the plaintiff has pleaded to grant ex parte temporary injunction.

04. The plaintiff further contended that the defendants have not any rights and interests in the suit property. The defendants in order to obstruct the plaintiff's possession over the suit property and causing disturbances to the plaintiff's peaceful enjoyment over the suit property. Hence, the learned advocate for the plaintiff has pressed to issue the Ex-prate ad interim injunction till the appearance of the defendants in the present matter.

05. Perused the application for temporary injunction in the light of submissions made by the learned advocate. The plaintiff has filed on record the legal notice dated 01/10/2020, reply of notice dated 12/10/2020, agreement to sale dated 27/04/2004,

agreement to sale dated 27/04/2004, contract of sale dated 12/12/2003, certified copy of judgment in R.C.S. No. 266/1989, certified copy of Exh. 01 of Execution Petition No. 60/2003, copy of judgment of Tahsildar, Ambajogai in No. 2012/Jama-1/Kavi-966/74, dated 22/07/2019 and 7/12 extract of Gat No. 29. From the documents filed on record it can be seen that the plaintiff and the defendants have entered into a contract of sale in respect of Gat No. 41 for the land admeasuring 88 R. Accordingly, the plaintiff was put in possession in respect of the said property. Perusal of the 7/12 extract of the Gat No. 29, from the 1996 to 2010 shows that the plaintiff was in possession of the suit property. However, the 7/12 extract which is filed on record dated 19/10/2020, which is at Sr. No. 20 of Exh. 04, shows that the name of the plaintiff was struck down. Hence, the doubt arises, whether the plaintiff is in possession of the suit property or not. As per the submission of the plaintiff that the suit property was purchased by on Ramakant Raghunath Mane, the name of the Ramakant Mane is appeared in the ownership column of the 7/12 extract. Also, the name of the defendant no. 1 appears in the ownership column. The plaintiff has sought the relief of declaration of ownership on the basis of adverse possession. Also, the contract of sale which has been entered between the parties are unregistered one. In such scenario, in my opinion it is necessary to hear the defendants before issuance of any injunction order. Audi Alteram Partem is the

basis principal of the justice system. In my opinion the plaintiff's prayer for injunction can be considered after the defendants appear. Before proceeding to issue injunction order opportunity of hearing must be granted to the other side. Resultantly, I proceed to pass following order.

:: ORDER ::

- 01.** Issue Show cause notice to defendant no. 1 and 2, as to why the injunction as sought by the plaintiff should not be granted.
- 02.** Special bailiff is allowed.
- 03.** Emergent process is allowed.

Date: 11/11/2020.

(C.M. Kharkar)
3rd Jt. Civil Judge Junior Division,
Ambajogai (MHBI06-3003)