

ORDER BELOW EXH. 05 IN R.C.S. NO. 08/2023

Plaintiff has filed an application by taking recourse to Order XXXIX Rule 1 and 2 read with section 151 of Civil Procedure Code, 1908. (Hereinafter referred to as C.P.C.) The property situated at village Kati, Tq. Nandura, Dist. Buldhana within the limits of Gram Panchayat Ward No. 2, building No. 6, admeasuring 299 sq. feet is the subject matter of the present suit more particularly described in paragraph No. 1 of the plaint and hereinafter referred suit property.

Plaintiff's Contention :-

2. The plaintiff has submitted that, he had purchased 299 sq. feet area out of 512 sq. feet area from defendant by registered Sale-Deed dated 19/11/1993 for the consideration amount of Rs. 9000/-. Since then plaintiff is owner and possessor of the suit property. By virtue of Sale-Deed the name of the plaintiff is recorded to the Gram Panchayat record. As per the Governments scheme of Pradhan Mantri Awas Yojana (PMAY), Gharkul is allotted to the plaintiff on the suit property. Accordingly, the first installment of the (PMAY) scheme is also received to the plaintiff. Further it is submitted the name of the plaintiff is also reflected in the Form No. 8 of the Gram Panchayat. It is the contention of the plaintiff that, on 30/01/2023 the plaintiff at about 11.00 a.m., the defendant came in the suit

property and obstructed to construct the suit property. Therefore, the plaintiff has prayed to restrained the defendant from causing obstruction in the suit property. Hence this application is filed.

Defendant's contention :-

3. Defendant has answered the application say at Exh. 16. Contention of plaintiffs are denied by defendant. Sale-Deed was never acted upon and possession of property is with defendant. The learned advocate for the defendant has submitted that, defendant was the owner and possessor of the property admeasuring 512 sq. feet. The defendant was in financial crisis so he demanded hand loan Rs. 5000/- to the plaintiff. Accordingly, the plaintiff gave hand loan to the defendant on a condition that, defendant will have to execute a Sale-Deed of 299 sq. feet area in favour of plaintiff with a condition to repurchase. Therefore, Sale-Deed was executed as security to the loan.

4. The plaintiff and defendant were agreed to execute registered Sale-Deed with option to repurchase. Further it is also contended that, defendant has not received amount of consideration i.e. 9000/- from the plaintiff. The possession over entire suit property is of defendant till today. On the contrary, the defendant had

repaid the loan amount to the plaintiff on 10/12/2015 and requested to the plaintiff to re-convey the suit property. However, the plaintiff has denied to re-convey the suit property on various pretexts. The plaintiff has no right, title and interest in the suit property. Hence, it is prayed to reject the application at Exh. 5.

POINTS TO BE DETERMINED.

5. Whenever an application for temporary injunction is to be decided, an indispensable trio must be considered by the Court. The trio is about important factors, along with others. The importance of these factors is highlighted and underscored by Honourable Supreme Court as well as by Honourable High Court time and again. In every judgment/pronouncement concerning to temporary injunction, Honourable Supreme Court and Honourable High Court have discussed the facts in light of those three factors. Prima facie case, balance of convenience and irreparable loss are those three factors which plays decisive role in grant or refusal of temporary injunction. Other factors are also there, but these three factors becomes significant due to their own characteristics. Therefore, while deciding any application for temporary injunction, the points are framed in view of these three factors. This

case is no exception to it. I have also framed points for determination in light of these three factors. The points below are answered with the help of available documents, contentions and submissions so unfolded. In my view, the points, their respective findings and reasons behind such findings can be best evinced as below.

S.N.	POINTS	FINDINGS
1.	Whether plaintiff has established prima facie case as to its possession over the property described in plaint particularly ?	Yes.
2.	Whether the balance of convenience is lies in favour of the plaintiff ?	Yes.
3.	Whether denial of temporary injunction will cause irreparable loss to the plaintiff ?	Yes.
4.	Whether grant of temporary injunction will cause irreparable loss to the defendant ?	No.
5.	Whether temporary injunction can be granted in the circumstances of the suit ?	Yes.
6.	What Order ?	As per final order.

6. Perused record. Heard Ld. Advocate Shri. P.S. Bodade for the Plaintiffs and Ld. Advocate Shri. P.S. Murhe for the defendant.

REASONS

AS TO POINT NO. 1 :-

7. Amongst all, the points so framed, this point is most significant and decisive. If at all it is found that there is no prima facie case, there is no need to look into the other points or factors. So, in my view, prima facie case means demonstration of legal question in which the Court must authoritatively look into. In present suit, it was important and necessary for plaintiff to establish at this stage that, he is in possession of the property described in suit and there is serious apprehension to its possession and enjoyment of right. Therefore, this point is taken for discussion in the first place.

8. So, existence of prima facie case is mainly existence of any important question/aspect in which the Court must intervene. The party applying for injunction [may be temporary or perpetual] must satisfy the Court that a certain question exists and intervention by the Court is immensely needed. As the term prima facie case is nowhere

defined, the above interpretation of the term can be derived with the help of various decisions in that regard. If at all the party succeeds to establish that judicial intervention is unavoidable, it can be said that the prima facie case is made out. However, at the same time, the observation in case of **Martin Burn Limited Vs. R. N. Banerjee; AIR 1958, SC 79**, must also be kept in mind which ruled down that relevant consideration for making out prima facie case must be the possibility to arrive at a conclusion in question on the basis of evidence so led. Here, the evidence may not denote to the oral or documentary evidence alike the one in suit trial. But, term evidence is certainly used here to refer to the available material on record, which can be seen or looked into prima facie. The difference in between such evidence and its apprehension is clearly marked out by Honourable Supreme Court in the Martin's case. It is highlighted and observed that, if the conclusion in question can be arrived, prima facie case is made out. However, for the other half of the trial, the evidence must be able to show that the conclusion is the only conclusion which could be arrived at on that evidence.

9. Learned Advocate for the plaintiff comes with the case that, plaintiff is in possession of the suit property by virtue of registered Sale-Deed dated 19/11/1993. To

counter the case of plaintiff the learned advocate for the defendant submitted that, defendant has not the sold the suit property to the plaintiff but it was a sale with option to repurchase of the suit property after payment of Loan amount. Therefore, it is necessary to see what prima facie material has been place on record to demonstrate that, it was a transaction of sale with option to repurchase. To support this contention, the learned Advocate for the defendant has submitted that, there was an oral agreement executed between plaintiff and defendant. Therefore it was orally agreed that, the plaintiff will re-convey the suit property to the defendant on repayment of Rs. 5000/-. The loan amount of Rs. 5000/- is given to the plaintiff on 10/12/2015. Therefore, it was a transaction of sale with condition to repurchase.

10. In the present suit, it was necessary for the plaintiff to demonstrate that, he had purchased the property from the defendant by registered Sale-Deed. It was also necessary for him to establish that he is in possession of the suit property since the date of purchase and especial on the date institution of the suit. Moreover, it was necessary for plaintiff to prove establish that, defendant had obstructed his possession. The plaintiff has produced the registered Sale-Deed dated 19/11/1993 along with list

at Exh. 4. The Sale-Deed shows that, defendant had executed it for the area of 299 sq. feet situated at village Kati. The registered Sale-Deed carries recital at page No. 4 that, the possession was delivered to the plaintiff on the date of registration of Sale-Deed. The document of Sale-Deed also shows that, defendant has put his thumb impression upon it as like plaintiff. The existence of this registered document demonstrate that, specific content about handing over possession are mentioned. On the other hand defendant has relied upon on affidavits of there witnesses namely Baburao Tongale, Sidhivinayak Vitokar and Vishal Jangle. This affidavits along with list at Exh. 18. These witnesses have unanimously stated about possession of defendant over the property in the subjected suit. So, the question before me is to evaluate the evidence through affidavits of witnesses of defendant and contents in the registered document about it's possession.

11. If the content of affidavits of witnesses of defendant are considered, they happens to be or is apparently resident of the village Kati or neighbor of the defendant. All these witnesses stated on oath that the property is in possession of defendant despite execution of registered Sale-Deed. They have also deposed through their affidavit that, document had been exhibited as security to loan which

plaintiff had given to the defendant as he was in need of Rs. 5000/-. On the other side there exists a registered conveyance about sale of the property. In the suit along with specific recital of handing over possession to the buyer by seller. The probative value of the registered Sale-Deed is certainly on the upper side than affidavits sworn in by the aforesaid witnesses of defendant. Moreover, Gram Panchayat record i.e. Form 8 filed along with list at Exh. 4 is also shows that, name of the plaintiff is entered to area of 299 sq. feet. by virtue of registered Sale-Deed. So the registered Sale-deed finds support from entry to the government record of Gram Panchayat. There exist presumption to these entries to revenue record or record of rights under Section 157 of Maharashtra Land Revenue Code, 1966. These entries are presumed to be genuine by the court unless contrary proved. Oral submissions of defendant with regard to existence of oral agreement can not be considered in absence of prima facie material in support to the contention so put forth. Moreover Section 92 the Indian Evidence Act, 1872, would restrain the plaintiff from putting up such contrary terms of the registered Sale-Deed.

12. Proof and counter proof part of suit trial but as on today the registered Sale-Deed and entires in record shows that, plaintiff is in possession of the property.

Veracity of witnesses of defendant will be tested during suit trial. But, if seen prima facie, the document and documentary evidence in favour of plaintiff out ways the affidavit of aforesaid witnesses. Moreover, denial of title of plaintiff as well as denial of possession of the plaintiff as claimed amount to obstruction to it.

13. Further, it is the contention of the defendant that, he is paying tax of the suit property. It is necessary to mention that, no tax receipt is showing that the defendant is paying tax of suit property to the Gram Panchayat. Moreover, the tax receipt can not decide who is in possession in the suit property.

14. So in my view plaintiff has established prima facie case i.e. existence of serious question about his legal rights. So, I have answered point No. 1 in affirmative.

AS TO POINT NOS. 2 TO 4 :-

15. These points are interlinked. Therefore discussion is taken up together.

16. The plaintiff has come with the case that, he is in possession in a suit property. If the description property is minutely perused, the actual area of 299 sq. feet. is adjacent to the area of defendant. The description of the

property in plaint matches with the photographs placed on record. Moreover, plaintiff has received the Ghakul from government and he has good opportunity construct a house on a suit property. On the contrary, no in convenience will cause to the defendant, if plaintiff has constructed so called Gharkul. So, in such aspect and to that extent, balance of convenience is tilted in favour of the plaintiff. Convenience means state of being the suitable or opportune.

17. Moving to important aspect irreparable loss, it is discernible that, grant of injunction or refusal of injunction has pernicious effect, in the form of irreparable loss. If the possession of the plaintiff and convenience of the plaintiff is not protected by way of possession, plaintiff will be deprived of his right under which he received a Gharkul from Government, despite the fact that he is lawful purchaser a suit property. On the contrary, if injunction granted and possession as well as convenience is secured, defendant will not be at any loss. The main reason to state so, is the continuous and unobstructed possession of the plaintiff since many years. So, in comparison to each other, it is evident that, rejection of temporary injunction will cause irreparable loss to the plaintiff than in case of grant of the same to the defendant. Therefore, point Nos. 2 and 3 decided in **affirmative** and point No. 4 is answered in **negative**.

AS TO POINT NO. 5 :-

18. Summation of all the above discussion, makes it clear that, plaintiff has exclusive possession over the suit property must be protected to secure convenience. As the prima facie case and balance of convenience established in favour of plaintiff to the extent of grant of temporary injunction in the circumstances so considered. So point No. 5 is answered in affirmative.

ORDER

1. The application for temporary injunction, Exh. 5, is allowed.
2. Till disposal of the suit, defendants are anybody on his behalf or anybody claiming to him or otherwise shall not cause obstruction or disturbance to possession and construction of plaintiff over area of 299 sq. feet as more particularly described in the plaint.
3. The cost will follow the main event.
4. All the concern to note the order and be uploaded in C.I.S.

Nandura
Date – 06/04/2023.

(R.A. Misal)
Civil Judge J.D., Nandura

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“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of the Steno :- Y. S. Muley

Name of the Court :- Judicial Magistrate F.C.,
Nandura.

Date of Signature of Presiding Officer :- 06/04/2023.

Date of Order uploaded :- 06/04/2023.