



**Reg.Civil Suit No.110/2023
Savita Malode Versus
Bhimrao Gawai**

COMMON ORDER BELOW EXH.5 & 21

The plaintiff has filed application below Exh.5 under Order XXXIX Rule 1 and 2, section 151 of the Code of Civil Procedure, 1908, seeking temporary injunction to restrain the defendant from obstructing the possession of the plaintiff over the suit property (more specifically described in para no. (2) of the application till final disposal of suit. The defendant has filed counter claim and has filed application below Exh. 21 under Order XXXIX Rule 1 and 2, section 151 of the Code of Civil Procedure 1908, seeking temporary injunction to restrain the defendant (original plaintiff) from obstructing the possession of the plaintiff in counter claim (original defendant) over the property in counter claim (more specifically described in para no. (1) of the application (for the sake of brevity and convenience hereinafter referred to as “property in counter claim”), till final disposal of the counter claim.

The Application of The Plaintiff in Nutshell is as Follows:

2. The plaintiff has contended that she is the owner and in possession of 81 R land in Gat No. 50 situated at village Amkhed, Tal. Chikhali, Dist. Buldhana. Out of 81 R land, land admeasuring 41R, being bounded as On or Towards East: land of plaintiff, on or towards West: land of Amol Khabutare, on or towards North: land of Bhanudas Gawai, Gajanan Wagh, Shivaji Wagh, on or towards South:

Chikhali Mehkar road, is the subject matter. (For the sake of brevity and convenience hereinafter referred to as 'suit property'). The plaintiff's family and defendant's family had good relations. In the years 2022 the defendant needed money for the construction of the house and purchase of car. Therefore, the defendant wanted to sell his agricultural land i.e., suit property. The defendant requested the plaintiff and her husband for purchase of his land. The plaintiff agreed to same. The plaintiff purchased the land (suit property) from the defendant by paying valuable consideration of Rs. 16,00,000/-. The plaintiff advanced Rs. 10,00,000/- at the time of agreement of sale(इसारपावती) executed by way of registered agreement dated 27.04.2022. The plaintiff advanced remaining amount of consideration at the time of execution of registered sale deed.

03. The defendant executed registered sale deed of the suit property dated 28.10.2022. As such the plaintiff is the owner and in possession of 81R land in Gat No.50. The name of the plaintiff is mutated to the revenue record of the suit property. The plaintiff is cultivating the suit property through Sunil Wagh. The land of defendant's brother is adjacent to the suit property. The defendant is taking disadvantage of the same and obstructing the possession of the plaintiff over the suit property.

04. On 18.05.2023 at 7.45p.m, the defendant and his brother Samadhan quarreled with Sunil Wagh. The defendant claimed that suit property belonged to him. The defendant tried to fix sprinkler pipe. The defendant threatened to kill Sunil Wagh and

the plaintiff. The plaintiff and her husband went to the defendant to resolve the dispute. However, the defendant assaulted the plaintiff and her husband. Therefore, the plaintiff's husband lodged report against the defendant. The defendant has instituted false case of illegal money lending against the plaintiff. The defendant is obstructing possession of the plaintiff over the suit property. Therefore, the plaintiff has filed present suit for perpetual injunction. By way of application below Exh.5 the plaintiff seeks to restrain the defendant from obstructing her possession till final disposal of the suit.

Say of the Defendant to Exh.5

05. The defendant has filed written statement and say to present application at Exh.20. The defendant has denied all the adverse allegations in the application and plaint. The defendant has contended that the plaintiff has never been owner and in possession of the suit property. The plaintiff has wrongly shown the four boundaries of the suit property. The four boundaries mentioned in agreement of sale and sale deed do not tally with actual ground reality. The 8 to 10 R land of the defendant has been acquired for Chikhali Mehkar road construction. Hence, the defendant could not execute sale deed of the suit property. The defendant needed money. A scheme for construction of house was sanctioned in his name. He availed loan from the plaintiff. Therefore, the defendant executed sale deed nominally, only as security for repayment of loan amount. The plaintiff is a housewife. The sale deed nowhere provides her source of income to pay such huge amount of consideration. Thus, it

shows that the sale deed is executed nominally. The sale deed is doubtful. Hence, the claim of the plaintiff is false. Thus, it is prayed that the application be rejected with costs.

The Application of Plaintiff in Counter claim (original defendant) at Exh.21:

06. The original defendant filed counter claim at Exh.19 for reconveyance and confirmation of possession against the plaintiff in respect of property in counter claim. The plaintiff in counter claim (original defendant) has filed application below Exh. 21 praying to restrain the defendant (original plaintiff) from obstructing possession of the plaintiff in counter claim over the property in counter claim, till final disposal of the counter claim. The plaintiff in counter claim has contended that he is the owner and in possession 41R land in Gat No.50, being bounded as towards East: government road (सरकारी शिव रस्ता), towards West: Chikhali Mehkar road, towards North: land of Amol Khabutare, towards South: land of Arun Wagh (for the sake of brevity and convenience hereinafter referred to as property in counter claim).

07. The plaintiff in counter claim had been allotted house in a government scheme. Therefore, the plaintiff in counter claim needed money. The husband of defendant in counter claim is a teacher. The plaintiff in counter claim was in habit of consuming

liquor. The husband of defendant in counter claim was into business of money lending. The husband of defendant in counter claim advanced in cash of Rs. 64,000/- as a loan amount. The husband of defendant in counter claim made the plaintiff in counter claim to consume liquor. The plaintiff in counter claim agreed to terms and conditions under the influence of liquor. The husband of defendant in counter claim had agreed to pay Rs. 1,50,000/-. However, the husband of defendant in counter claim made the plaintiff in counter claim to settle for the loan amount of Rs.64,000/- with interest rate at 5% per annum. The husband of defendant in counter claim had agreed to supply with necessary construction material. However, he avoided to do the same. Therefore, the plaintiff in counter claim doubted the intention of defendant in counter claim. Therefore, the plaintiff in counter claim borrowed money from his maternal uncle to repay the defendant in counter claim. However, the defendant in counter claim and her husband provided the plaintiff in counter claim of construction material. The husband of defendant in counter claim, misled the plaintiff in counter claim, under the pretext of execution of declaration for advancement of remaining loan amount. The plaintiff in counter claim later came to know that the defendant in counter claim has mutated her name to the revenue record.

08. The husband of defendant in counter claim is into illegal money lending business and grabs the lands of poor agriculturist. The land of plaintiff in counter claim is also illegally grabbed by the defendant in counter claim. The father of plaintiff in counter claim

had executed gift deed in his favour. The four boundaries mentioned in the said deed and sale deed are different. The defendant has filed application with District Registrar against defendant in counter claim for illegal money lending.

09. On 19.05.2023, the defendant in counter claim obstructed possession of the plaintiff in counter claim over the property in counter claim. The plaintiff in counter claim filed police report against the defendant in counter claim. The police initiated action against the defendant in counter claim. The defendant in counter claim has failed to execute reconveyance of the property in counter claim. Therefore, the plaintiff in counter claim has filed counter claim for reconveyance of property in counter claim. By way of application below Exh.21, the plaintiff in counter claim seeks to restrain the defendant in counter claim from obstructing his possession over property in counter claim till final disposal of counter claim.

Say of the Defendant in Counter Claim (Original plaintiff) to
Application at Exh.21

10. The defendant in counter claim filed written statement to counter claim and say to the temporary injunction application at Exh. 22. The defendant in counter claim has denied all the adverse allegations in the counter claim and application at Exh. 21. The defendant in counter claim has contended that the plaintiff in counter claim has executed absolute sale of the suit property. The

defendant in counter claim has purchased the suit property for valuable consideration. The defendant in counter claim is the owner and in possession of the suit property. The husband of defendant in counter claim is a teacher and a respectful member of society. The name of the defendant in counter claim is mutated to the revenue record. Hence it is prayed that the application at Exh.21 be rejected.

11. Read the applications, affidavit and say. Perused the record. Heard learned advocate Shri. S.N. Yandait for the plaintiff i.e. defendant in counter claim and Ld. Advocate Shri. V.R. Adawe for defendant i.e. plaintiff in the counter claim.

12. Following points arise for my determination in respect of application below Exh.5 and I have recorded my findings thereon for the reasons to be followed.

Sr. No.	Points	Finding
1.	Whether the prima facie case lies in favour of plaintiff	Yes
2.	Whether the balance of convenience leis in favour of plaintiff	Yes
3.	Whether the plaintiff will suffer irreparable loss, if injunction as prayed is not granted ?	Yes
4.	What Order ?	Application is allowed as per final order.

13. Following points arise for my determination in respect of application below Exh.21 and I have recorded my findings thereon for the reasons to be followed.

Sr. No.	Points	Finding
1.	Whether the prima facie case lies in favour of plaintiff in counter claim ?	No.
2.	Whether the balance of convenience lies in favour of plaintiff in counter claim ?	No.
3.	Whether the plaintiff in counter claim will suffer irreparable loss, if injunction as prayed is not granted ?	NO
4.	What Order ?	Application is rejected as per final order.

REASONS

AS TO POINT NOS 1 TO 3 of Exh. 5 and Exh.21. :

14. The discussion on all the points is based on same facts. Hence in order to avoid repetition all the points are taken up for discussion and dealt with together.

15. For the sake of convenience, the parties are referred to as plaintiff and defendant as per their nomenclature in the suit, i.e. the plaintiff in suit and defendant in counter claim would be referred to as plaintiff. The defendant in suit and plaintiff in counter claim would be referred to as defendant.

16. In order to succeed, the plaintiff has to prove three essential ingredients. The plaintiff has to prove prima facie case in her favour. The plaintiff has to prove that balance of convenience lies

in her favour. The plaintiff has to prove that she would suffer irreparable loss if injunction as prayed is not granted in her favour.

17. In order to succeed the plaintiff in counter claim has to prove three essential ingredients. The plaintiff in counter claim has to prove prima facie case in his favour. The plaintiff in counter claim has to prove that balance of convenience lies in his favour. The plaintiff in counter claim has to prove that he would suffer irreparable loss if injunction as prayed is not granted in his favour.

18. The plaintiff has filed on record 7/12 extract of Gt no.50(Exh.3 Sr. No.1), M.E. No. 1886(Exh.3 Sr. No.2), Index II(Exh.3 Sr. No.3), Agreement with Sunil Wagh (ठोकेपत्र)(Exh.3 Sr. No.4), Copy of FIR(Exh.3 Sr. No.5), affidavit of Sunil Wagh(Exh.3 Sr. No.6), affidavit of Vithal Wagh(Exh.14 Sr. No.3), affidavit of Digambar Wagh (Exh.14 Sr. No.4), copy of N.C. Report(Exh.17 Sr. No.1), Copy of FIR(Exh.25 Sr. No.1).

19. The defendant has relied on copy sale deed (Exh.30 Sr. No.1), copy of agreement of sale (Exh.30 Sr. No.2), application to District Registrar(Exh.30 Sr. No.3), application to Dy. S.P office Buldhana(Exh.30 Sr. No.4), copy of N.C. report(Exh.30 Sr. No.5), paper publication(Exh.30 Sr. No.6), affidavit of Samadhan Gawai(Exh.30 Sr. No.7), affidavit of Madan Arakh(Exh.30 Sr. No.8), affidavit of Mahendra Hiwale(Exh.30 Sr. No.9).

20. The present suit is for perpetual injunction in respect of 41R gat no.50. The defendant has filed counter claim for perpetual injunction in 41R land in Gat no.50 with different four boundaries. In sum and substance, the claim of the plaintiff is she is the owner and in possession of the suit property by virtue of sale deed executed by the defendant. Whereas the claim of defendant is that the said sale deed was executed nominally only to secure repayment of loan amount.

21. Before considering the adverse claim is it necessary to ascertain certain admitted facts. The defendant was the original owner of 41 R land in Gat no. 50 admitted. The execution of sale deed is admitted by the defendant though the nature is disputed.

22. The sale deed dated 17.10.2022, bearing registration no. 7820/2022(Exh.30 Sr. No.1) is at pivotal point. A copy of the said sale deed is placed on record. It is registered as per law. Apparently, the recital nowhere provides that the same is executed nominally, to secure repayment of loan amount. Apparently, the same is in nature of absolute sale. A copy of agreement of sale dated 27.04.2022 is also filed on record (Exh.30 Sr.No.2). On perusal of the same, it, prima facie appears that the defendant intended to execute the absolute sale of the suit property. Prima facie the said documents provide that the defendant has parted with the possession. The mutation entry no. 1886 (Exh.3, Sr. No.2) is certified in the name of the plaintiff. The name of the plaintiff is mutated to the 7/12 extract of Gat no. 50 (Exh. 3 Sr. No.1) to the extent of 81 R land. Thus,

apparently the claim of the plaintiff is fortified that she is the owner and in possession of suit property.

23. Ld. Advocate for the defendant has argued that the on the sale deed (Exh.30 Sr. No.1), the signature of the defendant is in English. On the agreement of sale (Exh.30 Sr. No.2), the signature of the defendant is in Marathi. Thus, the sale deed is doubtful. It is notable that the defendant has not denied his signature on both the documents. The said documents are registered documents. The registered document presumed to be validly executed. Hence, at this juncture, the difference in signature would not prima facie render the documents doubtful.

24. Ld. Advocate for the defendant has argued that the plaintiff is shown to be house wife and there are no averments showing source of income of the plaintiff. Hence, it is doubtful that the plaintiff could have paid huge consideration amount of Rs. 16,00,000/-. Ld. Advocate for the defendant has argued that the sale deed is doubtful. It is notable that the defendant himself has claimed that the husband of the plaintiff is a teacher and draws handsome salary. The defendant himself has claimed that the husband of the plaintiff is a rich person. Thus, there is possibility that the husband of plaintiff could have contributed for payment of consideration amount. Thus, there is no substance in the said argument of the defendant. Learned advocate for the defendant has argued that the land of defendant is acquired for road. However no material is placed on record to substantiate the same.

25. The defendant has disputed the four boundaries of suit property. The defendant has claimed that the property mentioned with four boundaries in counter claim and the application below 21, is the subject matter of dispute. The defendant, belatedly, has placed on record copy of will executed by his father (Exh. 24, Sr. 1). It is notable that description of suit property and description of property mentioned in sale deed(Exh.30 Sr. 1) correspond with each other. At the cost of repetition, it is stated that the execution of sale deed is not denied by the defendant. In such circumstances, the reliance of will would be decided upon trial.

26. The parties have relied on several affidavits. The plaintiff has placed on record affidavit of Sunil Wagh(Exh.3 Sr. No.6), affidavit of Vithal Wagh(Exh.14 Sr. No.3), affidavit of Digambar Wagh (Exh.14 Sr. No.4). The defendant has placed on record affidavit of Samadhan Gawai(Exh.30 Sr. No.7), affidavit of Madan Arakh(Exh.30 Sr. No.8), affidavit of Mahendra Hiwale(Exh.30 Sr. No.9). Ld. Advocate for the defendant has tenaciously argued that the plaintiff has relied on affidavits of persons who are not holders of land in Gat No.50. Ld. Advocate for the defendant has further argued that the by filing affidavits of Samadhan Gawai, Madan Arakh, Mahendra Hiwale, the defendant has shown his possession and fulfilled the requirement of Order XXXIX, Rule 1 of the C.P.C. Per contra Ld. Advocate for the plaintiff has argued that the defendant has relied on affidavits of his relatives. It is worthwhile to note that the sale deed apparently provides that the defendant has handed over possession of the suit property. Secondly, there are several

affidavits on record having rival claims. The record also shows that the parties have initiated criminal proceedings against each other claiming possession. Hence, in such circumstances, the reliability of the said affidavits, would be decided on the touchstone of trial.

27. It is notable that at this juncture, the registered sale deed is in favour of plaintiff. The name of the plaintiff is mutated to the revenue record of the suit property. The plaintiff has entered into Agreement with Sunil Wagh (ठोकेपत्र) (Exh.3 Sr. No.4). Thus, the same prima facie shows that possession of the plaintiff over the suit property. Admittedly, the defendant has filed application to District Registrar(Exh.30 Sr. No.3) alleging illegal money lending transaction by the plaintiff. It is notable that the plaintiff has approached court asserting civil right. Further, the defendant has placed nothing on record to show that the said authority has passed any order which would affect present proceedings. Hence, the plaintiff has successfully shown her prima facie possession. The defendant has denied ownership of the plaintiff to the suit property. This would apparently obstruction to the possession of the plaintiff. As such, the plaintiff has raised bonafide dispute requiring trial. Thus, the prima facie case is in favour of plaintiff. It is notable that the defendant has claimed the transaction between him and the plaintiff was a money lending transaction. The defendant has repaid the loan amount. It is notable that the defendant has challenged the sale deed in counterclaim for the first time. Surprisingly, no action was initiated by the defendant independently to challenge the said sale deed

affecting his right. As such, there is no prima facie case in favour of the defendant i.e. plaintiff in counter claim.

As to point No. 4 of Exh. 5 and Exh.21:

28. The plaintiff, (defendant in counter claim) has established her possession over property suit property. It is notable that the documents filed on record prima facie show that the apprehension of the plaintiff of the obstruction by the defendant is plausible. Hence, the balance of convenience lies in favour of the plaintiff. The plaintiff would suffer a loss which could not be compensated in terms of money. Hence, points no. 1 to 3 are answered in affirmative in respect of application at Exh. 5.

29. As such plaintiff in counter claim, defendant has failed to prove prima facie case in his favour. The plaintiff in counter claim has failed to show that he would suffer a loss which cannot be compensated in terms of money. The plaintiff in counter claim has failed to show balance of convenience in his favour. Hence points no. 1 to 3 are answered in negative in respect of application at Exh.21. In an Answer to point no. 4 in respect of Exh.5 and Exh.21 following order is passed:

ORDER

1. The application at Exh. 5 is allowed.
2. The application at Exh. 21 is rejected.

3. The defendant i.e., plaintiff in counterclaim is hereby restrained temporarily by issuing temporary injunction from obstructing possession of plaintiff i.e., defendant in counterclaim, of suit property more specifically described in paragraph (2) of the application below Exh.5, till final disposal of the suit.
4. Cost in main cause.

Chikhali
Date:07.07.2023

(Smt. P.R. Kulkarni)
Jt. Civil Judge (Jr.Dn.), Chikhli