



**ORDER BELOW EXH.38**

The original defendant i.e. the plaintiff in counterclaim has filed present application under Order XXXIX Rule 1 and 2, section 151 of the Code of Civil Procedure, 1908, seeking temporary injunction to restrain the original plaintiff i.e. defendant in counter-claim from alienating, creating encumbrance over the suit property till final disposal of the suit. (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 the suit and defendant in the counterclaim would be referred to as 'plaintiff' and the defendant in the suit and plaintiff in the counterclaim would be referred to as 'defendant')

02. The defendant has contended that the plaintiff's husband and Sunil Wagh, Digambar Wagh and other are hooligans. The said persons obstruct the possession of the defendant. During the pendency of present suit, the plaintiff applied for loan to Shriram Nagri Sahakari Patsantha Ltd. Chikhli. The plaintiff intended to avail loan of Rs. 40,00000/-. The plaintiff mortgaged suit property. Accordingly, mortgage deed bearing registration number 4503/2024 was registered. Mutation entry no.1940 would be certified accordingly. The defendant has objected certification of said mutation entry. However, the plaintiff could get it certified as she is hand in

glove with the revenue officers. If the plaintiff would be successful in availing loan on the suit property, there would be multiplicity of proceedings. Therefore, the defendant has prayed that plaintiff be restrained from encumbering the suit property till final disposal of the suit.

03. The plaintiff filed say to present application at Exh.39 and resisted the present application. The plaintiff has denied all the adverse allegations in the application. The defendant has challenged the order passed by this Court below Exh.5 and Exh.21 before District Court, Buldhana. The date of hearing is fixed as 09.08.2024. The plaintiff has executed mortgage deed in favour of Shriam Nagri Pat Santha, Chikhli on 27.06.2023. The plaintiff repaid the said loan and released the property. The defendant has not raised any objection to the said loan transaction. The plaintiff has mortgaged the suit property for Rs. 40,00000/- with Chikhli Urban Co. Opp. Bank. The mortgage deed is executed on 27.05.2024. The loan amount is transferred to the plaintiff's account. The plaintiff has provided all the documents relating to suit property and pendency litigation to the concern Bank and after due procedure the Bank disbursed the loan to the plaintiff. The plaintiff has entered into agreement of sale in respect of suit property. The plaintiff is the owner and free to enjoy the suit property. Hence, it is prayed that application be rejected.

04. Read the application, affidavit and say. Perused the record. Ld. Advocate Shri. S.P. Chavan has filed written notes of argument at Exh.46 and Ld. Advocate Shri. S.N. Yandait for the plaintiff has filed written notes of arguments at Exh.47.

05. Following points arise for my determination and I have recorded my findings thereon for the reasons to be followed.

<b>Sr.No</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether the prima-facie case lies in favour of defendant (plaintiff in counter claim)?	: No
2.	Whether the balance of convenience lies in favour of defendant (plaintiff in counter claim)?	: No
3.	Whether the defendant (plaintiff in counter claim) will suffer irreparable loss, if injunction as prayed is not granted?	: No
4.	What order?	: The application is rejected as per final order.

### **REASONS**

#### **AS TO POINT NOS 1 TO 4 :**

06. All the points are inter connected, hence in order to avoid repetition, the same are taken up for discussion

together.

07. The suit is for perpetual injunction in respect of 41R land in Gat No. 50 situated at village Amkhed, Tal. Chikhli, Dist. Buldhana(the suit property). The plaintiff has claimed her possession over the suit property and alleged that the defendant is obstructing her possession over the suit property. Whereas, the defendant has claimed that he is the owner and in possession of 41R land in Gat no.50 (the counterclaim property). The descriptions of the suit property and the property in counterclaim are different. The plaintiff claims to be owner and in possession of suit property by virtue of sale deed executed by the defendant. Whereas the defendant has claimed that the said sale deed was executed nominally only to secure repayment of loan amount.

08. It is necessary to note that the original plaintiff had filed application below Exh.5 seeking temporary injunction to restrain the defendant from obstructing her possession over the suit property. The defendant has filed counter-claim and in the said counter-claim he filed application below Exh.21, claiming temporary injunction to restrain the plaintiff from obstructing his possession over the property in counter claim. The application below Exh.5 is allowed and application below Exh. 21 is rejected.

09. Again, the defendant has filed present application

for temporary injunction to restrain the plaintiff from alienating, encumbering on the suit property. The defendant has relied on agreement of sale executed by the plaintiff of the suit property, the objection filed by defendant with Shriram Nagri Sahakari Pat Santha, the paper publication, the report filed with police station. It is notable that the plaintiff has filed on record a copy of mutation entry no. 1904 and statement of disbursement of loan to her account. It is notable that the defendant intends that the plaintiff would not create encumbrance over the suit property. However, the record shows that the loan is already disbursed. Thus, the application has become infructuous on that count.

10. It is significant to note that the plaintiff has already entered into registered agreement of sale in respect of suit property. The plaintiff has brought to the knowledge of this Court that the appeal is pending against the order passed by this Court below Exh.5 and Exh.21. However, the said orders are not modified or reversed. The finding recorded under the said order provides that prima facie plaintiff is in possession of the suit property. Hence, there are no believable, solid reasons to restrain the plaintiff from alienating the suit property at this juncture. Further, the alienee, if any would be bound by the proceeding and outcome of this case. Hence, the defendant prima facie failed to show that the alienation of the suit property is required to be restrained at this juncture. Thus, there is no prima facie case in favour of the defendant. The

defendant would not suffer any loss which would not be compensated in terms of money. The defendant would not suffer any grater hardship. Therefore, the balance of convenience is not in favour of defendant. Hence, point nos. 1 to 3 are answered in negative and in an answer to point no.4 following order is passed-

**ORDER**

1. The application at Exh. 38 is rejected.
2. Cost in main cause.

Place: Chikhali  
Date:06.08.2024

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

**CERTIFICATE**

I affirm that, the contents of this PDF file Judgment / order are same word for word, as per original order.	
Name of the Stenographer	: S.B. Deshpande
Name of the Court	: J.M.F.C. Court, Chikhali
Dated	: 06.08.2024
Order uploaded on	: 08.08.2024