

ORDER below Exh.05 Nandkishor Vs.
(Passed on 11th October,2012) Sachiv Amdapur

01. This is a suit for permanent injunction.
02. In response to the suit summons and notice to interim application the defendant No.1 duly appeared and filed its written statement at vide Exh.35 and adopted to the same as reply to the interim application by filing pursis at vide Exh.36. The defendant No.2 filed its written statement at vide Exh.54.
03. Heard both the learned Advocates for respective parties at length and perused the written notes of argument filed by plaintiff at vide Exh.56.
04. Upon rival contentions mentioned in the application and say, the following points arise for consideration to which findings are given along with suitable reasons.

<u>POINTS</u>	<u>FINDINGS</u>
01. Whether plaintiff has prima faice case ?	No.
02. To whom the irreparable loss would cause ?	To defendants
03. In whose favour balance of convenience lies ?	In favour of defendants.
04. What order ?	As per final order.

REASONS

05. Point No.1:-The suit, properties mentioned in para No.1 A to 1D are shops owned by plaintiffs situated on Survey

No.376 bearing Gat No.1527 admeasuring to 12 feet long North South direction and 10 feet wide in East West direction. Whereas the defendant No.1 is a Vivid Karyakari Sahakari Sanstha Maryadit Amdapur and defendant No.2 is Secretary Gram Panchayat Amdapur. As per the plaintiff, the shops are constructed on F-class land in Survey No.376 which is admeasuring to 11H 24R out of which 1H 62R is given by Government for grave yard and 1H62R is given to Amar Vidhyalalya on lease. Rest of the area is encroached by the local people and in the said encroached land the suit shops are situated. The plaintiffs made application to defendant No.2 for entering their names as owner against the shops in the concerned property register which was declined and subsequently defendant No.2 issued a notice and advertisement to local news paper for public auction of the suit properties was published on 14/1/2010. The plaintiffs issued notice U/s 164 of Maharashtra Co-operative Societies Act to defendants on 31/3/2010 which was not taken by the defendants. The plaintiffs apprehend that if public auction is taken place then they will suffer irreparable loss as their livelihood is based on the shop and hence, they filed suit for permanent injunction and interim injunction.

06. The defendant No.1 through his written statement at vide Exh.35 denied the contentions made by the plaintiff in the plain as well as application and came up with a defence that plaintiffs are tenants of defendant No.1, they are given suit shops on rent. All the defendants are defaulters and when they are asked to pay the rent amount they filed the present false suit against the defendants. Apart from this, the defendant No.1 submitted that it is a society and on the property belonging to the society which is situated in Survey No.373/2 Gat No.1015 Nazul sheet No.2 plot No.5 constructed building by raising loan from Co-operative Bank and Bhu Vikas Bank and thereafter, the various blocks were given on rent. The defendant No.1 society is in default of payment of wages of their employees therefore, the employees filed an application before Labour Commissioner and in pursuance to that the entire building came to be attached. The suit shops are in the name of defendant No.1 and the plaintiffs are tenants in their shops. This being the fact, plaintiff filed false complaints against this defendant No.1 with Tahsildar and other officers by saying that it has encroached over the Government property. In pursuance to the said complaint the land on which the building of defendant No.1 is standing got measured by surveyor and in which no encroachment was found. The defendant No.1 further submitted that the plaintiffs

have no case and moreover, the public auction is not done by them therefore, the suit is not tenable and the interim application be rejected.

07. The defendant No.2 through his written statement at vide Exh.54 supported the defendant No.1.It was further submitted that plaintiffs made an application to defendant No.2 for mutating their names as owners in the record but, the same was rejected as there were not owners. Lastly, it was submitted that there is no merit in the suit and application hence, both may be rejected.

08. The plaintiff in support of his contentions filed certain documents vide Exh.3. The important document which is filed is at Exh.3/2 which is pertaining to notice issued by defendant No.1 on 23/1/2010 in which the defendant No.1 claimed that plaintiffs have not submitted the rent and the said property has been attached by the Special Recovery Officer and asked them to vacate the suit premises and hand over the possession.

On the other hand ; the defendant No.2 also filed certain documents vide Exh.67, at serial No.1 is the certificate issued by Assistant Labour Commissioner Akola, at serial No.2

is the list of persons whose wages are to be paid, at serial No.3 is the letter written by District Registrar Co-operative societies Buldana to a Special Recovery officer for fixation of the price of suit property, at serial No.4 is the copy of public auction, at serial No.5 is the details of seized property and at serial Nos.6 to 10 are the notices issued by defendant No.1 to plaintiffs dated 29//8/2001.

09. From the pleadings, documents and the arguments advanced by the respective parties before this Court, it can be clearly seen that plaintiffs are not the owners of the suit shops as claimed. The plaintiffs have not filed any document showing ownership over the suit property. On the contrary ; the defendant No.1 stated that the plaintiffs are tenants in the suit shops and they are defaulters. In support of defendant No.1, defendant No.2 also submitted that plaintiffs have made application to him to mutate their names as owners but, the same was rejected as they were not the owners of the suit property. Further more, the documents filed by the defendant No.2 at vide Exh.67 clearly shows that the property of defendant No.1 came to be attached in pursuance to the certificate issued by Assistant Commissioner of Labour Akola dated 24/12/2009 with respect to recovery of dues from employer towards payment of wages of employees of defendant

No.1. This clearly shows that neither defendant No.1 nor defendant No.2 has issued advertisement of public auction with respect to the suit shops. It has been issued as per the order of Assistant Commissioner of Labour Akola, Therefore, the present suit is bad for non joinder of necessary parties and at the same time, the plaintiffs are not able to show that they are owners of the suit shops hence, they are not entitle for relief of injunction in their favour. Hence, the point No.1 is answered in negative.

10. Point Nos.2 & 3 :- The plaintiffs are not able to made out a prima facie case that they are not the owners of the suit shops. The plaintiffs apprehend that if public auction is taken place then they will suffer irreparable loss as their livelihood is based on the shop. On the contrary ; the defendant No.1 stated that the plaintiffs are tenants in the suit shops and they are defaulters. Moreover, the public auction is not done by defendants but, are done as per certificate passed by Assistant Labour Commissioner Akola dated 24/12/2009 under Industrial Dispute Act, 1947 towards recovery of payment of wages to the employees of defendant No.1. The balance of convenience is in favour of defendants. If injunction is passed then defendants will suffer more irreparable loss than the plaintiffs. Hence, answer to point Nos.2 & 3 are given in

negative and following order is passed.

O R D E R

01. The application, Exh.05, is rejected.
02. Both parties are directed to expedite the matter.
03. Any interim order, if any passed in this matter stands vacated.
04. Costs to cause in the suit.

Dated 11th October, 2012

Sd/- (M.M.Rao)
Civil Judge,Jr.Dn.Chikhli
Dt. 11/10/2012