

ORDER BELOW EXHIBIT 5 IN DISPUTE NO. 38/2016

(passed on 23/02/2017)

1. This is an application made by disputants for temporary injunction of restraining opponent society from discussing topic No. 14 of agenda notice dated 03.05.2016 in the meeting dated 22.05.2016 or any meeting. But opponent society failed to file its say.

2. The case of disputants in nutshell is as under :-

Opponent is cooperative housing society registered under the Maharashtra Cooperative Societies Act, 1960. (In short the MCS Act). Mr. T.R.R. Panikar became the member of opponent society. After purchasing the land from contribution of the members, Mr. T.R.R. Panikar was allotted plot No. 36. Some disputes had taken place between Mr. T.R.R. Panikar and opponent society and some of the disputes are still pending. But Mr. T.R.R. Panikar has died on 19.12.2015. After his death, disputants got the right in the said plot as his legal heirs. Thus, they are entitled to own, possess and occupy the plot No. 36 and bungalow thereon. But on 10.05.2016 they came to know from one of their neighbors that in AGM scheduled on 22.05.2016 at agenda No. 14, there is topic to discuss regarding plot of deceased TRR Panikar. They are paying regular maintenance. However, opponent society may take any decision of the property of the disputants by taking advantage of AGM. Opponent society is very likely to take de-facto possession of the plot No. 36. Hence, disputants instituted the present dispute for declaration that opponent society has no right to take decision in respect of plot No. 36 and to disturb

possession and ownership of disputants. But opponent society is trying to dispossess the disputants from plot No. 36 by taking advantage of AGM scheduled on 22.05.2016 or any meeting. Hence, the present application has been made.

3. After service of summons and notice, opponent society appeared in the dispute. But it has failed to file its say. Hence, application was proceeded without its say.

4. I have heard the learned advocate for disputants. But no argument is advanced on behalf of opponent society. Perused record and proceedings. I have also gone through the relevant provisions of the Code of Civil Procedure and the Maharashtra Co-operative Societies Act, 1960.

5. On going through the contentions and submissions, following points arise for my determination and I record its findings, with reasons, as under-

Sr. No.	Points	Findings
1)	Do disputants prove that they made out prima facie case ?	 Yes
2)	Do disputants prove that balance of convenience lies in their favour ?	 Yes
3)	Do disputants prove that they would suffer irreparable loss, if temporary relief is not granted as sought ?	 Yes
4)	What order ?	 The

application is
allowed.

REASONS

AS TO POINT NO. 1 :-

6. So far as this point is concerned, it is to be seen as to what is a prima facie case. In establishing a prima facie case, it would be sufficient for disputants to show that they have a fair question to raise as to the existence of their right. While examining the question of prima facie case the Court has to satisfy that the claim was not frivolously vexatious, in other words there is a serious question to be tried.

7. It is the specific plea of disputants that their predecessor Mr. T.R.R. Panikar was member of opponent society and he was allotted plot No. 36. In this connection, disputants relied on photocopy of lay out. It is seen from lay out that Mr. T.R.R. Panikar was in possession of plot No. 36. Moreover, it is also seen from photocopy of receipt that plot No. 10 was allotted to Mr. T.R.R. Panikar. But according to disputants, plot No. 10 was revised as plot No. 36 vide lay out of the opponent society. Hence, it is clear that Mr. T.R.R. Panikar was member of the opponent society and he was in possession of Plot No. 36.

8. But Mr. T.R.R. Panikar has died on 19.12.2015. In this connection, photocopy of his death certificate is on record. After his demise, disputants received the rights to inherit plot No. 36 as his

legal heirs. But opponent society wanted to discuss about plot of Mr. Mr. T.R.R. Panikar in AGM scheduled on 22.05.2016. It is pertinent to note that opponent society has not informed the disputants in the context of discussion of plot No. 36. Disputants should have been given opportunity to say something in AGM about their plot. But before the said AGM, they should know as to what discussion is to be going on in respect of their plot. But without giving such opportunity, opponent society wanted to discuss about plot No. 36. The agenda notice discloses that opponent society is going to discuss about plot of Mr. T.R.R. Panikar. In view of this, it is prima facie seen that intention of the opponent society is not proper.

9. It is clear that the disputants are in possession of plot No. 36 as legal heirs of Mr. T.R.R. Panikar. But according to them, opponent society is trying to dispossess them. If prima facie dispute property is seen in possession of disputants, opponent has no right to dispossess them without following due course of law. It is the duty of Court to protect right of party who is in possession of subject matter of dispute. Therefore, whatever a final decision of the present dispute may be, but it needs to protect right of disputants who are in possession of the dispute property i.e. plot No. 36.

10. In view of discussions supra, I am of the considered opinion that a serious question is to be tried in the instant dispute and thereby disputants made out prima facie case. I, therefore, record affirmative finding below point No. 1.

AS TO POINT NO. 2 :-

11. 'Balance of convenience' means the comparative mischief or inconvenience to the parties. In arriving at the balance of convenience, the Court has to weigh the mischief likely to be caused applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted.

12. As regards balance of convenience and inconvenience, if the opponent is not restrained by an order of injunction as sought and ultimately the dispute succeeds, disputants are to suffer more than that will be suffered by opponent. If the injunction is granted and dispute ultimately fails, the opponent will not suffer loss or injury. In view of discussions supra, I am of the considered opinion that balance of convenience lies in favour of disputants. Hence, I record affirmative finding below point No. 2.

AS TO POINT NO. 3 :-

13. An irreparable injury means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the disputants in case of success in the dispute would not place them in the position in which they were before injunction was refused. In view of discussions and findings of points Nos. 1 and 2, I am of the considered opinion that disputants would suffer irreparable loss or injury, if temporary injunction is not granted. Hence, I record affirmative finding below

point No. 3.

AS TO POINT NO. 4 :-

14. The phrases prima facie case, balance of convenience and irreparable loss are not rhetoric phrases for incantation but wounds of width and elasticity to meet myriad situations presented by man's ingenuity in given facts and circumstances. In the instant case, disputants proved these three points. Therefore, the temporary relief is required to be granted against opponent. In the result, following order is passed.

ORDER

- 1) The application at exhibit 5 is allowed.
- 2) The opponent society is temporarily restrained from discussing about the plot No. 36 of Mr. T.R.R. Panikar in any meeting till final disposal of the dispute.
- 3) Costs in cause.

Pune
Date 23/02/2017

(D. A. Argade)
Judge, Co-operative Court No. 1, Pune