

Order below Exh.5 in Regular Civil Suit No.24/2019.
(Jagannath Bhila Dhole Vs. Machhindranath Onkar Mang, etc-4)
(CNR No. : MHDH06-000599-2019)

Present suit is filed for specific performance of contract and perpetual injunction in respect of suit property Gat No.403 + 404 + 405/16, admeasuring 01 H. 21 R., situated at village Ranjane, Tal. Shindkheda, Dist. Dhule (hereinafter referred as 'suit property') and the present application is moved by the plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure for temporary injunction to restrain the defendants from causing obstruction to his possession over suit property.

2. According to plaintiff, the suit property is owned by defendant No.1. He is retired army man. Defendant No.1 is his closed friend. Defendants have executed lease agreement in his favour in respect of suit property on 17/05/2000 for the period of 99 years. Plaintiff has paid consideration amount of Rs.62,000/- to defendants as per said lease agreement. Since then, the suit property is in his possession. He has right to hold the possession of the suit property till 2099 as per said lease agreement. On 17/08/2013 he was cultivating suit property and defendants have obstructed to his possession, therefore, he had filed Civil Suit bearing R.C.S. No.45/2013 against defendants for perpetual injunction. The said suit was proceeded without written statement of defendants and it was dismissed on 15/12/2015. Thereafter, he preferred appeal against said judgement before Hon'ble District Court by filling Reg. Civil Appeal No.04/2016 and said appeal was dismissed on 08/02/2019. Thereafter, he supplied copies to his Ld. Counsel to prefer appeal before Hon'ble High Court.

3. Thereafter, he issued notice to defendant No.1 on 09/05/2019 stating that this Court and Hon'ble District Court have not directed him to hand over the possession of suit property to defendant No.1 and only refused his prayer of injunction. By this notice he also stated that defendant No.1 lodged false complainant to the police station and refused to act as per lease agreement. He intimated by said notice to defendant No.1 to follow the terms of lease agreement dated 17/05/2000. The said notice replied by defendant No.1 as per notice reply dated 24/05/2019 stating that the plaintiff's possession over the suit property is illegal and he demanded to hand over the same within 08 days. Plaintiff has also replied to said notice reply contending that defendants have to follow due process of Law to take possession of the suit property and they cannot dispossess him without following the due process of Law.

4. Thereafter, on 15/06/2019 at about 09:00 a.m. when plaintiff was cultivating the suit property through tractor, defendants came there and obstructed his possession. They have also threatened him and tried to dispossess him forcibly. Therefore, he constrained to file the present suit. He has contended that the defendants are trying to dispossess him forcibly and if they succeed to do so he will suffer irreparable loss. The suit property is in his possession, therefore, he has shown prima-facie case in his favour. Balance of convenience is also in his favour. Lastly, he has prayed for temporary injunction to restrain defendants from causing obstruction to his possession over the suit property.

5. Defendants have resisted the suit and application Exh.5 by filling their say and written statement below Exh.10. They have

denied all adverse contentions of the plaintiff. They have denied that the suit property is in possession of the plaintiff. They further denied that they have executed lease agreement in favour of the plaintiff. It is contended by them that they never executed any agreement in favour of plaintiff. The suit property is in their possession. Plaintiff has filed false suit against them. The suit filed by plaintiff for injunction already dismissed by the Court. The appeal filed by plaintiff is also dismissed by the Hon'ble District Court. Plaintiff has prepared forged document of agreement and it does not bear signature of defendants. After dismissal of appeal filed by plaintiff, plaintiff has forcibly taken possession of suit property to create ground for file false suit. Thereafter, they received notice from plaintiff. They have issued notice reply to plaintiff. After their notice reply, plaintiff has given possession of suit property to them and therefore, now the suit property is in their possession. Plaintiff has filed this false suit with intention to grab the suit property. The suit property is in their possession. Therefore, injunction cannot be granted in favour of the plaintiff. Lastly, they have prayed for dismissal of this application.

6. For my determination following points arise and I have recorded my finding thereon as under.

| <u>Points</u> | <u>Findings</u> |
|--|------------------------|
| 1) Whether plaintiff having <i>prima facie</i> case in his favour ? | In the negative. |
| 2) Whether balance of convenience lies in favour of plaintiff ? | In the negative. |
| 3) Whether irreparable loss will be caused to the plaintiff, if injunction not granted in his favour ? | In the negative. |

4) What order?

As per final order.

-: R E A S O N S :-

As to Point Nos. 1 to 4 :-

7. All points are interlinked with each other. Hence, to avoid repetition and for the sake of convenience I have discussed them altogether.

8. Perused the application, say filed by defendants and entire documents placed on record. Heard Ld. Adv. Shri. B.Z. Marathe for the plaintiff and Ld. Adv. Shri. A.C. Mangase for the defendants.

9. In support of his claim, plaintiff has filed 7/12 extract of the suit property, copy of lease agreement, copy of judgment in R.C.S. No.45/2013, copy of judgment in Reg. Civil Appeal No.04/16, notice issued by him dated 09/05/2019, notice reply of defendants dated 24/05/2019 and his notice reply dated 03/06/2019. Defendants have filed 7/12 extract of suit property for the year 2004-2005 to 2012-2013.

10. Learned Advocate for the plaintiff submitted that defendants have executed lease agreement in favour of the plaintiff and as per said agreement the suit property is in possession of plaintiff. It is further submitted that in the notice reply dated 24/05/2019 defendants have admitted that the suit property is in possession of defendants. It is further submitted that in their written statement also defendants have admitted that the suit property is in possession of the plaintiff. It is further submitted that the contentions of the defendants itself indicates that the plaintiff has possession over the suit property. Defendants have obstructed to possession of the

plaintiff. Therefore, if defendants not restrained from causing obstruction, it will cause great irreparable loss to the plaintiff. Plaintiff has shown prima-facie case in his favour and balance of convenience also lies in his favour. It is further submitted that the temporary injunction can be granted against true owner, if he obstructs to possession of person who having possession over the property. To support this contention he relied on judgment of Hon'ble High Court in case of *Mumbai International Airport Pvt. Ltd. Vs. Indamer Company Pvt. Ltd. and another, decided on 02/07/2008.* Lastly, he prayed for granting temporary injunction in favour of the plaintiff.

11. On the contrary Ld. advocate for the defendants submitted that there in no *prima facie* case in favour of the plaintiff. It is further argued that defendants are owner of the suit property and they never executed any agreement in favour of plaintiff. It is further argued that there is no documentary evidence filed by plaintiff to show that he has possession over the suit property. The 7/12 extract of the suit property clearly shows that the suit property is in possession of the defendants. It is further argued that plaintiff had filed suit earlier for the same relief on same document and the said suit was dismissed by Court on merit. Appeal against said judgment also dismissed by Hon'ble District Court. It is further submitted that in the said suit the issue of possession was framed and which was decided against plaintiff and it was held that the suit property is in possession of defendant No.1, therefore, this evidence shows prima-facie possession of defendants over the suit property, therefore, in absence of possession temporary injunction cannot be granted in favour of the plaintiff. Lastly, prayed for rejection of the

application.

12. Section 37 of the Specific Relief Act, 1963, provides that temporary injunction is such as is to be continued until a specified time, or until the further order of the Court, and it may be granted at any stage of a suit, and it be regulated by the Code of Civil Procedure, 1908. The first rule is that the applicant must make out a *prima facie* case in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a *prima facie* right and infraction of such right is a condition precedent for grant of temporary injunction. The burden lies on the plaintiff to satisfy the court by leading evidence or otherwise that he has a *prima facie* case in his favour.

13. Plaintiff has filed this suit for specific performance of the terms of lease contract and perpetual injunction against the defendants. According to the plaintiff the suit property is in his possession. Defendants have executed lease agreement in his favour on 17/05/2000 and since then, the suit property is in his possession. Defendants have caused obstruction to his possession over the suit property. I have gone through the documents placed on record and pleading of both parties. It is not disputed that the suit property is owned by defendants. It is also not disputed that plaintiff had filed R.C.S. No.45/2013 and which was dismissed. It is also not disputed that appeal filed by the plaintiff before Hon'ble District Court was also dismissed.

14. After perusal of the documents placed on record, it appears that plaintiff had filed suit R.C.S. No.45/2013 against defendant No.1 claiming relief of perpetual injunction. In the said suit issue No.1 and 2 were framed as follows.

1. Whether the plaintiff proves that he is in possession of the suit property in view of lease deed executed by defendant ?

2. Whether plaintiff proves that defendant threatened to dispossess him ?

According to plaintiff the said suit was decided without written statement of defendant. However, perusal of copy of judgment it appears that defendant had filed his written statement and counter claim below Exh.16. Thereafter, Court had framed issues below Exh.25. Therefore, after full-fledge trial Court has decided these both issues in the negative. It was held by the Court that plaintiff has not proved lease agreement. It was also held that plaintiff is not in possession of suit property. These issues decided by the Court after adducing evidence of both parties. Therefore, it is clear that the Court has concluded in R.C.S. No.45/2013 that the suit property is not in possession of the plaintiff and also defendants have not executed lease agreement in favour of plaintiff. The appeal filed by the plaintiff before Hon'ble District Court was also dismissed by Hon'ble District Court with finding that the suit property is not in possession of the plaintiff.

15. According to plaintiff after decision of appeal by Hon'ble District Court he issued notice to defendants stating that Court has not directed him to hand over the possession the suit property to

defendants. It means even after finding of the Court, plaintiff is claiming that the suit property is in his possession. Already Court has concluded in R.C.S. No.45/2013 that the suit property is not in possession of the plaintiff. Hon'ble District Court has also concluded that the suit property is not in possession of the plaintiff. Therefore, it is clear that, after evidence, in both suit and appeal the issue of possession is already decided against plaintiff. Therefore, it could not be understand how plaintiff contended in notice that the Court has not directed him to hand over the possession.

16. Ld. Counsel for the plaintiff has submitted that defendants have admitted possession of the plaintiff over the suit property in notice reply and even in written statement. Already the Court has concluded after full-fledge trial that the plaintiff has no possession over the suit property. It is also not case of the plaintiff that after decision of suit R.C.S. No.45/2013 and Civil Appeal No.04/2016 he got possession of suit property. On the contrary he is claiming possession on the same ground i.e. lease agreement dated 17/05/20000 and the said issue of possession as per said lease agreement is already decided by the Court on evidence of both parties with finding that the suit property is not in possession of the plaintiff. Therefore, prima-facie material will not override over the full-fledge trial decision of the Court. Moreover, the 7/12 extract of the suit property also shows that the defendant No.1 is in possession of the suit property. Therefore, prima-facie it appears that suit property is not in possession of the plaintiff. Therefore, the judgment relied by plaintiff of Hon'ble Bombay High Court in case of Mumbai International Airport (Cited Supra) is not helpful to the plaintiff.

17. Considering the prima-facie material brought on record it appears that plaintiff has not shown his possession over the property, therefore, the prima-facie case is not in favour of the plaintiff. In absence of possession, it can not be said that balance of convenience lies in favour of the plaintiff. Therefore, temporary injunction can not be granted in favour of plaintiff as prayed. Considering the above discussion I am of the view that plaintiff is not entitled to relief claimed. Hence, I have answered points No. 1 to 3 in the negative and as to point No.4 I proceed to pass the following order.

ORDER

Application of the plaintiff Exh.5 is hereby rejected.

Date : 02/12/2019.

(S. L. Vaidya)
Civil Judge (J.D.),
Shindkheda Dist. Dhule.

CERTIFICATE

I certify that the contents of this PDF file are word to word as per Original Order.

Name of the Steno : N.C. More,

Name of the Court : Civil Court J. D., Shindkheda,
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Sd/-xxx
Stenographer (Gr.III)