

Order Below Exh-05
(Passed on 05th Day Of April 2018)

01] This is an application for temporary injunction vide Order 39 Rule 1 of Civil Procedure Code, 1908. **(Hereinafter referred to as C.P.C.)**

02] Brief facts of application are as under :

The applicant purchased a piece of land ad-measuring area of 0.06 H.R. of Gat No. 224 from non-applicant No. 3 and 4 vide registered sale deed dated 21.11.2016. **(This land is subject matter of suit in which the present application is filed and therefore hereinafter referred to as suit property)** Non-applicant No. 3 and 4 handed over the possession of suit property to applicant at the time of sale itself. Accordingly, the applicant became owner and possessor of suit property. Therefore, applicant is constructing a toilet upon the suit property. But non-applicant No. 1 and 2 without any lawful authority obstructing and disturbing the lawful possession of applicant over the suit property. Therefore, applicant constrained to file a suit for declaration and permanent injunction along with present application for temporary injunction.

03] Per contra non-applicant No. 1 and 2 resisted the application vehemently vide their reply filed below Exh- 24. Wherein they specifically pleaded that the land bearing Gat No. 224 ad-measuring area about 11.00 H.R. is their ancestral property. They have equal right in the said property. There never occurred partition of said property. They are in the possession of suit property. Therefore, non-applicant No. 3 and 4 have no authority to sale any part of the said land including the suit property to the applicant without their consent. But in spite of that applicant appears to have prepared false and fabricated sale deed of suit property with the help of non-applicant No. 3 and 4. Hence, on all these counts non-

applicant No. 1 and 2 prayed to reject the application. However non-applicant No. 3 and 4 failed to file reply in spite of ample opportunity. Hence, application proceeded without reply of non-applicant No. 3 and 4 vide specific order to that effect below Exh-01.

04] Heard the learned counsel for applicant and non-applicants. On the basis of fact, contentions advanced by the rival parties and evidence available on record following points arise for my determination. I have considered them at length and recorded my findings thereon followed by reasons thereof:

<i>Sr. No.</i>	<i>Points</i>	<i>Findings</i>
1	Whether applicant has prima facie case?	In Affirmative
2	Whether balance of convenience lies in favor of applicant?	In Affirmative
3	Whether irreparable loss would cause to applicant, if temporary injunction is refused?	In Affirmative
4	What order?	Application is Allowed

REASONS

As to points No. 1 to 3:-

05] The point No. 1 to 3 are interlinked with each other. So also evidence on all these three points appears to be common. Therefore, in order to avoid repetition of facts and evidence I have chosen to consider all these three points conjointly.

06] In order to succeed in an application for temporary injunction, it is necessary on the part of applicant to show that he has a prima facie case, balance of convenience lies in his favor and irreparable

loss is likely to cause to him, if temporary injunction is refused. By keeping in mind the aforesaid principles, the application in hand needs to be evaluated. In that direction it is specific case of applicant that he purchased a piece of land ad-measuring area about 0.06 H.R. of Gat No. 224 i.e. the suit property from non-applicant No. 3 and 4 vide a registered sale deed dated 21.11.2016 for valuable consideration of Rs. 5000/-. Non-applicant No. 3 and 4 handed over the possession of suit property to applicant at the time of sale itself. Accordingly, applicant became the owner and possessor of the suit property. In order to support this contention the applicant has strongly relied upon the sale deed dated 21.11.2016. Therefore, I may at the out set refer here the sale deed dated 21.11.2016. The bare perusal of said sale deed makes it crystal clear that non-applicant No. 3 and 4 sold area of 0.06 H.R. of Gat No. 224 i.e. the suit property to applicant for valuable consideration of Rs. 5000/-. The said sale deed further reveal that non-applicant No. 3 and 4 handed over the possession of suit property to the applicant immediately at the time of sale itself. Thus the pleading of applicant and documentary evidence in the form of sale deed prima facie shows that applicant is owner and possessor of the suit property.

07] On the other hand non-applicant No. 1 and 2 failed to show even prima facie that the suit property is their ancestral property by producing any sort of documentary evidence on record. Similarly, they failed to show that they are in the possession of suit property for want of any sort of documentary evidence to that effect. Apart from this the remaining contention of non-applicant No. 1 and 2 that non-applicant No. 3 and 4 have no authority to sale suit property and applicant prepared false sale deed with the help of non-applicant No. 3 and 4 can be considered at the time of final hearing and not now at the time of deciding application of temporary injunction.

08] Hence, in view of facts and circumstances referred above I am of the considerate opinion that the applicant has a prima facie case, balance of convenience lies in his favor and irreparable loss is likely to cause to him, if application for temporary injunction is refused. Therefore, I hold that applicant is entitled for temporary injunction. Accordingly, I proceed to pass following order.

ORDER

1. Application is allowed.
2. Non-applicants or anyone else on their behalf are hereby restrained temporarily from disturbing the peaceful possession of applicant over the suit property till final disposal of suit or until further orders.
3. Dictated and pronounced in an open court.

Date: 05.04.2018

(Vishal A. Sathe)
CJJD, Sadak Arjuni

CERTIFICATE

"I affirms that the contents of this P.D.F. File judgment are same word for word as per original order"

Name of Stenographer (L.G.): - Dineshkumar C. Sakure

Name of the Court: - (Vishal A. Sathe)
C.J.J.D. & J.M.F.C.,
Sadak Arjuni

Date: - 05.04.2018

Judgment signed by presiding officer on :- 05.04.2018

Judgment upload on: - 05.04.2018