

Order Below Exh. 5 in Spl. Civ. Suit No. 41 of 2014

The plaintiff has filed this application as per Order 39 Rule 1 of the Code of Civil Procedure wherein he prayed for relief of temporary injunction against the defendants

2. Brief facts necessary for the disposal of this application are as under-

The subject matter of the present suit and the application are the eastern portion of house property bearing CTS No. 2899 sheet No. 32 M.C.H. No.1-34-111 admeasuring 3586.10 Sq. ft. situated at Shardabai Compound, Jalna (hereinafter referred to as "the suit property"). One Imannual Mustafa Ali Abbasi (father of defendants No. 1 to 4 and husband of defendant No.5) is owner of the suit property. On 10/07/1998 he executed agreement of sale in favour of the plaintiff and thereby agreed to sale the suit property for a consideration of Rs. 7,71,000/-. On the day of the agreement to sale, the plaintiff paid Rs. 1,00,000/- to deceased Imannual. It was agreed between the parties that, outstanding amount will be paid by the plaintiff to deceased Imannual at the time of execution of registered sale deed, which was to be executed in the month of November, 1998. The plaintiff further contended that, till 24/04/2001, he paid total amount of Rs. 3,71,000/- to deceased Imannual. On 27/04/2001, deceased Imannual executed bharana and possession receipt. According to the plaintiff, till today he has paid Rs. 5,71,000/- to defendants and he has received possession of the suit property.

3. Subsequently, on 26/05/2005 Imannual died. Therefore, transaction could not be completed. The plaintiff further pleaded that, due to some Court proceeding, there was injunction order regarding the property under sale. After death of Imannual, his legal heirs i.e. the defendants No. 1 to 5 assured plaintiff that they will execute registered sale

deed in his favour as soon as Court matter are finalised. The plaintiff is ready and willing to pay outstanding amount of Rs. 2,00,000/-. On 17/04/2014, despite demand of the plaintiff, the defendants No. 1 to 5 refused to execute sale deed regarding the suit property in his favour. Hence, the plaintiff has filed this suit for specific of performance of agreement to sale and for perpetually restraining the defendants from alienating the suit property.

4. Initially, the suit was filed against the defendants No. 1 to 5 only. In the mean time, the defendants No. 1 and 5 executed sale deed dt. 09/05/2014 registered on 12/05/2014 in favour of Rajani Kailas Newasekar. Therefore, the plaintiff impleaded Rajni Newasekar as defendant No. 6 in the present suit.

5. Along with the suit, the plaintiff has filed present application and contended that, the defendant No. 6, who is not concerned with the suit property, is trying to interfere to the peaceful possession of the plaintiff. The defendants will alienate the suit property. Hence, plaintiff prayed for relief of temporary injunction against the defendants from alienating the suit property and from obstructing the plaintiff's possession thereon.

6. Defendants No. 2-A, 3 and 4 appeared but failed to file their say. The suit is proceeded exparte against defendants No. 1, 2-B and 5.

7. The defendant No. 6 filed her written statement and say below **Exh.33**. She denied entire contentions in the plaint. She specifically pleaded that, there was no cause of action to file this suit. The suit is not within limitation. The defendant No. 6 purchased 136.60 Sq. Mtr. Land out of 285.30 Sq. Mtr. owned and possessed by defendants No. 1 and 5 for a consideration of Rs. 6,00,000/-. The plaintiff is not concerned with that

property. Deceased Imannual never executed any agreement to sale in favour of the plaintiff. The plaintiff filed this suit merely to harass the defendant. Hence, she prayed that application be rejected.

8. Following points arise for my determination. I have recorded my findings thereon for the reasons mentioned thereunder:

| <u>POINTS</u> | <u>FINDINGS</u> |
|--|---------------------------|
| 1) Whether the plaintiff has made out prima facie case? : | ...Yes. |
| 2) Whether the plaintiff prove that he will suffer irreparable loss, if application is rejected? : | ...Yes. |
| 3) In whose favour balance of convenience lies? : | Plaintiff's |
| 4) What order? : | ..Application is allowed. |

: **REASONS** :

9. Heard learned counsel Mr. S. A. Quadri on behalf of the plaintiff. Despite sufficient opportunity no one argued on behalf of defendants No. 2-A, 3 and 4. Heard learned counsel Mr. Navmahalkar on behalf of the defendant No. 06. Perused documents available on record. I will make reference of it wherever and if at all necessary.

As to Points No. 1 to 3 :-

10. At the outset, I mention that, in the title clause as well as at various places, in the plaint and application, the plaintiff mentioned name of father of defendants No. 1 to 4 as 'Imannual'. However, in para No. 4, the plaintiff mentioned name as Manual. Upon asked, learned counsel for

the plaintiff's, submitted that those names are of one and same person. No objection raised by defendants that Imannual and mannual are different persons. Therefore it is held that that Imannual and mannual is one and same person.

11. In support of his contention, the plaintiff has produced various documents on record. List Exh.4/1 is agreement to sale dt. 10/07/1998 executed by Imannual Mustafa Abbasi in favour of Bharat Damodhar Newasekar (plaintiff). It is also mentioned in the agreement to sale that, defendants No. 1 to 5 also consented to said transaction. By said agreement, Imannual agreed to sale eastern side portion of the house admeasuring 3586 Sq. feet to the plaintiff for a consideration of Rs. 7,71,000/-. On the day of the agreement to sale, the plaintiff paid earnest amount of Rs. 1,00,000/- to Imannual. It was agreed between the parties that the plaintiff will pay outstanding amount on the day of execution of registered sale deed which is to be executed in the month of November, 1998. On that day possession of an open space admeasuring 15 x 28 feet handed over to the plaintiff.

12. List Exh.4/2 is Bharna pawti and Taba pawti written on stamp paper dt. 27/04/2001. It is mentioned in the said Bharna pawti that till 24/04/2001, the plaintiff made payment of Rs. 3,71,000/- to Imannual Abbasai. It is also mentioned therein that the possession of remaining suit property also handed over to the plaintiff. The plaintiff also paid Rs. 2,00,000/- to Imannual Abbasai on the day of execution of Bharna pawti. Thus, Imannual Abbasi received total amount of Rs. 5,71,000/- from the plaintiff out of total consideration of Rs. 7,71,000/-.

13. List Exh.4/3 is PR card extract of land bearing CTS No. 2899. Its shows that names of defendant No. 1 Manish and defendant No. 5 Lyona

are recorded by way of succession.

14. The plaintiff has also produced copy of sale deed dt. 09/05/2014 executed by defendant No. 5 Lyona and defendant No. 1 Manish in favour of defendant No.6. By that sale deed, the defendants No. 1 and 5 sold a construction admeasuring 136.60 Sq. Mtr., to the defendant No. 6 for a consideration of Rs. 6,00,000/-. Said sale deed also contents recitals regarding pendency of present suit. Notice of the suit also attached to the sale deed. Further, copy of order passed below Exh.12, directing appearing defendants not to alienate the suit property is also attached to the sale deed. Thus, it is clear that the defendant No. 6 as well as defendants No. 1 and 5 were aware about the pendency of the suit as well as existence of injunction order prohibiting alienation against the appearing defendant i.e. defendants No. 2-A, 3 and 4. Thus, the sale deed was executed with full knowledge about the pendency of suit and existence of prohibitory order.

15. List Exh. 39/3 is copy of judgment passed by the Hon'ble Bombay High Court in writ petition No. 5096/1998 wherein Imannual/Mannual and defendant No. 1 was party. This judgment has been filed by the plaintiff to show that due to pendency of said writ petition all transactions pertaining to the immovable properties has been prohibited. Para No. 1 of the judgment also affirm said fact.

16. Learned counsel Mr. S. A. Quadri argued on behalf of the plaintiff that the defendants No. 1 to 5 are heirs of deceased Imannual. They were consenting party to the transaction between the plaintiff and deceased Imannual. Agreement to sale dt. 10/07/1998 as well as Bharna pawti clearly shows that possession of the suit property handed over to the plaintiff. Despite knowledge of institution of the suit, the defendants

executed sale deed in favour of the defendant No.6. Thus, there is likelihood of further alienation of the suit property. The plaintiff has strong *prima-facie* case for specific performance. Therefore, he prayed that present application be allowed.

17. Per contra, learned counsel Mr. Navmahalkar, on behalf of the defendant No.6, argued that the suit of the plaintiff itself is not tenable. The plaintiff ought to have filed this suit during the life time of Imannual. Therefore, plaintiff is not entitled for any relief at this belated stage. Hence, he prayed for rejection of the application.

18. In order to succeed, the plaintiff must *prima-facie* shows that deceased Imannual executed agreement to sale in favour of the plaintiff and former handed over possession of the suit property to the later. Documents on record clearly shows that Imannual Abbasi executed agreement to sale in favour of plaintiff regarding suit property and thereby agreed to sale the same to the plaintiff for a consideration of Rs. 7,71,000/-. On the same day Imannual Abbasi received earnest amount of Rs. 1,00,000/- from the plaintiff. It is also clear that in view of Bharna pawti and Taba pawti, the Imannual Abbasi handed over possession of entire suit property to the plaintiff. The name of defendants No. 1 to 5 also mentioned in the agreement to sale as consent giver to the transaction. However, the instrument of agreement to sale not bear signature of defendant No.3. Be that as it may. The documents shows that plaintiff has paid Rs. 5,71,000/- to the deceased Imannual out of total consideration of Rs. 7,71,000/-. Thus, the plaintiff has paid substantial consideration amount. Further copy of sale deed shows that, despite knowledge of institution of the suit as well as existence of prohibitory order restraining alienation the defendants No. 1 and 5 executed sale deed in favour of the defendant No. 6. The defendant No. 6 has stated in her written statement

and say that the plaintiff is not concerned with the suit property and he is not in possession thereof. This fortifies contention of the plaintiff that defendants will alienate the suit property and obstruct his possession thereon. Therefore, in order to avoid multiplicity of the proceeding and to protect interest of the plaintiff, the plaintiff is entitled for equitable relief of temporary injunction.

19. The sum and substance of above discussion is that the plaintiff has made out prima-facie case. Therefore, if application is rejected he will suffer irreparable loss. For the same reason, balance of convenience lies in his favour. Hence, I answer points No. 1 and 2 in the affirmative and point No. 3 accordingly.

As to Point No. 4:

20. In view of findings to the points No. 1 to 3 this application deserves to be granted. Hence, in the result, I pass following order.

ORDER

- 1) The application is allowed.
- 2) The defendants No. 1 to 6 are hereby temporarily restrained from alienating the suit property and obstructing the plaintiff's possession thereon till final adjudication of the suit.
- 3) Cost in cause.

Date :23 /03/2016

Sd/-23/03/2016
(A. R. Ubale)
5th Jt. Civil Judge (S.D.)
Jalna.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original order.

Name of Steno : P. T. Bura
Name of Court : 5th Jt. Civil Judge (S.D.), Jalna
Date of PDF : 28/03/2016
Sd/-28/03/16
(P.T.Bura)
Stenographer