

Spl.C.S. No.30/2018
Vimal -Vs- Santosh
CNR No. MHJN02-0005522018

Order below Exh.5

This is an application filed by plaintiff under Order 39 Rule 1 and 2 r/w. section 151 of Civil Procedure Code for temporary injunction to restrain defendant from alienating suit property. Read application and perused record. Defendant has not filed say and remained absent for argument. Heard advocate for plaintiff.

2. Shop bearing Municipal No.2846/2781, Municipal plate No.1-10-73, CTS No. 703 ad-measuring 22.3 square meter situated at Danabazar, Tq. & District Jalna is the subject matter of suit. Hereinafter called as "Suit Property".

3. According to plaintiff, the defendant is owner and in possession of suit property. On 22.02.2017 defendant executed agreement of sale of suit property in favour of plaintiff for consideration of Rs.12,00,000/-. Out of which plaintiff has paid Rs.8,00,000/- to the defendant as an earnest amount. It was agreed that sale deed will be executed on or before 21.08.2017 and at that time remaining balance amount of Rs.4,00,000/- will be given to the defendant. It was also agreed that in the mean time defendant will clear the bank loan so as to make the suit property free from encumbrances. However, defendant went back from the transaction and avoided to execute sale deed as agreed. On 07.11.2017, plaintiff issued notice to the defendant calling upon him to comply the

transaction but in-vain. Hence, plaintiff constrained to file instant suit for specific performance of contract. Plaintiff is always ready and willing to perform his part of contract. Defendant is attempting to alienate suit property. If he succeeds, plaintiff will suffer irreparable loss. Plaintiff has prima-facie case and balance of convenience is also lies in his favour and hence urged to allow the application.

4. In support of contention plaintiff has relied on ***Anand Prasad Agarwalla Vs Tarkeshwar Prasad, 2001(3) Civil L. J.860*** and ***Chaudhary Abdul Mazid Vs Shenaz Abdulla, 2010(7) Mh.L.J.167***, wherein Hon'ble Supreme Court and Hon'ble High Court has held that, “*It may not be appropriate for any court to hold mini trial at the stage of grant of temporary injunction*”.

In Shamrao Ganpat Chintamani Vs Kakasaheb Laxman Gorde,2008(2) Mh.L.J.819, Hon'ble High Court observed that, “*At the stage of temporary injunction court can refer to documents which are produced on record without formal proof*”.

In Nirav Deepak Modi Vs Najoo Behram Bhiwandiwalla, 2012(3) Civil Court Cases,033(Bombay), Hon'ble High Court held that, “*suit for specific performance can be filed on the basis of unregistered documents and also upon an oral agreement. Lack of notorisation or registration does not dis-entitle plaintiff to the relief*”.

Similarly, in ***Balavantgir Ganpatgir Giri Vs Mansi Construction and Developers,2006(5) Mh.L.J.306***, Hon'ble High Court held that, “*An agreement which restricts delivery of possession on execution of sale deed cannot be construed to be a conveyance*”.

5. Considering the pleadings following points arise for determination and I have recorded my findings with reason thereon as under :-

S.N.	POINTS	FINDINGS
1.	Whether plaintiff has prima facie case ?	Affirmative
2.	Whether balance of convenience lies in favour of plaintiff ?	Affirmative
3.	Whether plaintiff will suffer irreparable loss if temporary injunction is not granted ?	Affirmative
4.	What order ?	Application is allowed.

REASONS

As to point No. 1 to 3 :-

6. These points are interlinked with each other, hence for the sake of convenience they are discussed together. The discretion of the court can be exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff :-

(1) Existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of temporary injunction.

(2) When the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff.

(3) Clear possibility of irreparable injury being caused to the

plaintiff if the temporary injunction is not granted.

7. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

8. In **Breach Candy Swimming Bath Trust vs. Dipesh Mehta, 2016(7) All MR 330** Hon'ble High Court held that, "*Interim injunction is essentially a temporary injunction operating till suit is tried and disposed of or until further orders of court. Passing of an interim order in favour of plaintiff is only for limited purpose of securing the interest of the plaintiff pending trial. Its purpose is essentially to see that a certain status quo is perpetuated till the trial concludes and rights of the parties are finally determined. It ensures that a plaintiff who has a good chance of succeeding in the trial, is not deprived of the fruits of his success by the defendant irretrievably altering or otherwise affecting the subject matter of the suit or otherwise prejudicing the plaintiff to his disadvantage.*"

In **Prakash Ahuja vs. Ganesh Dhonde, 2016(6) Bom.CR 262** Hon'ble High Court held that, "*Though it may not be in appropriate for court to expect plaintiff to show that provisions of section 52 of Transfer of Property Act, do not afford adequate protection. However, there is no blanket proposition of law that, in each and every case plaintiff is expected to show it as a condition precedent for grant of injunction order.*"

Similarly, in *Maharwal Khewaji Trust vs. Baldev Dass*, 2005(1) Mh.Lj. S.C. 1043 Hon'ble Supreme Court held that, “A defendant is required to make out a case that irreparable loss or damage will be caused to him during the pendency of suit if he is not allowed to alter the status quo.”

9. Plaintiff has come with the specific case that defendant executed agreement of sale of suit property in his favour on 22.02.2017 for consideration of Rs.12,00,000/-. Plaintiff has paid Rs.8,00,000/- to the defendant towards an earnest amount. It was agreed that sale deed will be executed on or before 21.08.2017 and at that time balance consideration amount of Rs.4,00,000/- will be paid. Plaintiff has filed copy of PR card at Exh.4/1. It shows that suit property is recorded in the name of defendant. Copy of agreement of sale Exh.4/2 denotes that transaction took place between the parties as pleaded by plaintiff. In plaint there is clear averment that plaintiff is ready and willing to perform his part of contract. Defendant has not resisted the claim of plaintiff. Prima-facie, it appears that there is executable and concluded contract between the parties.

10. From the agreement of sale, it appears that plaintiff has paid substantial amount of sale consideration. The issue whether agreement of sale is executed between parties or not needs to be investigated during trial. It appears that plaintiff has raised triable issue. Prima facie case does not necessarily mean the prima facie title which has to be proved by evidence during trial. One of the object of

granting interim relief is to maintain the present situation of subject matter of suit. Plaintiff has apprehension that defendant may transfer suit property. If the suit property is alienated, plaintiff will have to chase successive transferee. On the other hand, there is nothing on record to show that defendant will suffer irreparable loss if he is not allowed to alter the situation of suit property. Therefore, plaintiff has prima facie case and balance of convenience is also lies in his favour. If the interim relief in respect of alienation of suit property is not granted he will suffer irreparable loss. The present case does not appear to be the one where it is expected from plaintiff to show as a condition precedent that protection afforded under section 52 of Transfer of Property Act, is not adequate. So, in order to avoid the multiplicity of proceedings and to maintain the present situation of suit property, plaintiff is entitled for discretionary relief of temporary injunction. Hence, I answer point No. 1 to 3 in affirmative and pass following order :-

ORDER

- 1 . Application is allowed.
- 2 . Defendant or anybody claiming through him is temporarily restrained from alienating suit property in any manner till decision of suit.
- 3 . Costs in cause.

Date : 11-04-2019.

Sd/-
(V.M. Mankhair)
7th Joint 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 : Darewar A. C.
Name of Court : 7th CJSD Court.
Date of PDF : 11.04.2019.

Steno