

Regular Civil Suit No. 52 of 2017.

Shripal Mali etc.
Versus
Malutai Ghongade.

ORDER BELOW EXH. 5.

This is an application filed under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 for temporary injunction.

2. According to plaintiffs, for the expenditure of the house and to pay the hand loan of other persons, defendants had alienated the suit property to the predecessor in title of plaintiffs by the sale-deed dated 30/09/1991 for the lawful consideration. Since then predecessor in title of the plaintiffs as well as plaintiffs is in possession of the suit property as owner. The entry of the said sale-deed is taken to the *Grampanchayat* record. plaintiffs is to pay the taxes of the suit property. According to plaintiffs, it was the responsibility of defendant to given effect of the sale-deed in the record of rights of the suit property. It is further contended that in the month of June 2015 defendant tried to alienate the suit property. At that time plaintiffs asked to defendant about their act. At that time defendant replied that he is owner of the suit property. So plaintiffs obtained the 7/12 extract of the suit property. They

seen that there is name of defendant. So they asked consent of defendant. But, defendant denied to perform her act and threatened to alienate the suit property. Accordingly, plaintiffs have published one notice in newspaper. The defendant has given false reply to the said notice. Now defendant tried to disposes the plaintiffs. Hence, the present suit for injunction in which the present application is filed for temporary injunction.

3. Defendant has filed her written statement below exh. 14 and also filed counter claim at exh.16. According to defendant, the sale-deed was executed only for exchange of 2.9 kg. silver. The said sale-deed is not out to out sale-deed but, only for the security of the amount of silver. One document was also executed between the parties. According to her, she is of the owner and possessor of the suit property. Plaintiffs are not lawful owners and possessors of the suit property. They had denied the execution of sale-deed. According to them, the said sale-deed is sham. The suit property is owned by *Beghar Loksangha, Hupari*. Defendant has no right to alienate the said property. So she prayed to reject the application.

4. Heard both sides for sufficient length and time. Perused the documents produced on record. Following points arise for my determination and my findings thereon are as under for the reasons stated below :

Sr.no.	Points.	Findings.
1	Does plaintiffs prove prima facie case ?	Affirmative.
2	Is balance of convenience lie in favour of plaintiffs ?	Affirmative.
3	Does plaintiffs prove that irreparable loss caused to them if injunction not ordered ?	Affirmative.
4	What order ?	Application is allowed.

AS TO POINT NO.1 TO 3 : -

5. Admittedly there is sale-deed in between the predecessor in title of plaintiffs and defendant. According to defendant, the said sale deed is not out to out sale-deed, but, it is executed as a security. Whether the said sale deed is executed as a sale-deed or not is the point to be considered at the time of final hearing. At this stage, the case has to see at horizontal level. Mini trial is not expected.

6. In view of Section 154 of the Maharashtra Land Revenue Code, 1966, it is the duty of the Registrar to send the copy of index or sale-deed to the *Talathi* and it is the duty of the Village *Talathi* to take entry of the said sale-deed. So though the Registrar has not performed his act, the sale deed can not be put under the carpet. There is entry in the *Grampanchayat* record

which is standing in favour of plaintiffs. The entries in the record of rights having presumptive value under Section 157 of the Maharashtra Land Revenue Code, 1966. But, said entry is rebuttable by producing sale deed, plaintiffs have rebutted the presumption of entries in the record of rights. Whether the suit property is really owned by *Beghar Loksangha Hupari* and plaintiffs and defendant have no right to alienate the suit property is the question to be decided at the time of final hearing.

7. Actually if we peruse the documents produced along with list exh.24/5, it is seen that after lapse of 10 years the property can be mortgaged, alienated etc. with the permission of *Beghar Loksangha Hupari*. The said document bears the date as 19/03/1978. The disputed sale deed is executed on 30/09/1991 i.e. after lapse of 10 years. It is nowhere made clear that permission is obtained or not from *Beghar Loksangha Hupari*. Be that as it may, at this prima facie stage, plaintiffs have proved prima facie case, balance of convenience lies in favour of plaintiffs. If injunction is not granted then plaintiffs will suffer irreparable loss which can not be compensated in the terms of money. Plaintiffs have asked the relief of injunction not to interfere to the plaintiffs' possession over the suit property as well as not to alienate the suit property to the 3rd person and not to create 3rd party interest. I have gone through the judgment of

Hon'ble Apex Court in the case between Maharwal Khewaji Trust (Regd.) Faridakot Versus Baldev Das reported in 2005(1) Mh.L.J. (SC) 1043. In para no.10 of the said judgment, it is observed that “*unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceeding*”. Considering the said legal position, prayer of not alienation of the suit property or to create 3rd party interest needs to be granted. From the sale deed, it is seen that the possession of the suit property is with plaintiffs. So relief of injunction about not to interfere the plaintiffs' possession over the suit property also needs to be granted.

8. Both parties have filed some affidavits of some persons in support of their claim. I have gone through the said affidavits along with the documentary evidence produced on record. Man may lie but documents can not be lie. After considering entire case at horizontal level, I answer points no.1 to 3 in the affirmative.

AS TO POINTS NO. 4 :-

9. In view of my affirmative findings to point nos. 1 to 3 application deserves to be allowed. Hence, I make following

order:

ORDER

- 1** Application exh.5 is allowed as follows :
- 2** Defendant, her agents, servants, power of attorney holders, family members, etc. are hereby restrained from interfering the peaceful possession of plaintiffs' over suit property till the final disposal of the suit.
- 3** Defendant is also restrained from alienating the suit property to 3rd party or to create 3rd party interest over the suit property till the final disposal of the suit.
- 4** Costs in main cause.

Date 01/11/2017.

Place Ichalkaranji

sd/-

(S.D. Chavan)

IVth Jt. Civil Judge Jr. Dn., Ichalkaranji

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. U.M. Jadhav.
Name of Court	Shri. S.D. Chavan, C.J.J.D., Court No.4, Ichalkaranji.
Date of Dictation	01/11/2017
Judgment Signed by the P.O. on	01/11/2017
Judgment uploaded on	01/11/2017