

MHKO070013312021



Shri. Bharat Rupsing Tamayache
V/s.
Shri. Nitin Mahendra Vyas and others

ORDER PASSED BELOW EXH. 5

1] This application is filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C. praying therein to restrain defendants from obstructing plaintiffs peaceful possession and from creating any third party interest in the property bearing, Row House No. A-27 admeasuring 94.25 sq.mt. and 1014.56 sq.ft., situated in Gat No. 473/A/1 of village Yadrav and is bounded as mentioned in para No.1 of the plaint (*which will be hereinafter referred as 'suit property' for the sake of convenience*).

2] Perused the application and detail say of defendant Nos. 1 and 2 at Exh.28. Defendant No.4 failed to file say by appearing before court, though served with notice and suit summons. On the contrary defendant No.3 is yet not served with notice or suit summons. However, due to urgency mentioned by plaintiff application is heard and proceeded without service of defendant No.3. The suit is for specific performance of contract i.e. agreement

to sale dtd. 20/11/2018 executed by defendant Nos. 1 and 2 in favour of plaintiff and consent deed dtd. 6/8/2021 by defendant No.4 in favour of plaintiff. According to plaintiff he is in possession of suit property on the basis of above agreements. Defendants are obstructing plaintiffs possession and trying to create third party interest hence by way of present application, plaintiff is seeking injunction against defendants restraining them from obstructing plaintiffs peaceful possession over the suit property and from creating any charge over it and restraining defendants from transferring the suit property to any third party, till decision of suit.

3] Suit property is owned by defendant No. 4. Defendant No.1 and 2 who are husband and wife entered into an agreement to sale dtd. 18/8/2011 with defendant No. 4 and received the possession of suit property on the basis of it. However due to financial difficulties defendant Nos. 1 and 2 decided to sale suit property in favour of plaintiff. Accordingly, on the basis of registered agreement to sale dtd. 20/11/2018 defendant Nos. 1 and 2 agreed to sale suit property for consideration of Rs. 23,60,000/- in favour of plaintiff. On the same day possession was delivered to the plaintiff. After receiving possession plaintiff has installed electricity meter bearing No. 250601011791. Grampanchayat Yadrav also entered name of plaintiff in their assessment record as owner of suit

property. The said agreement of sale dtd. 20/11/2018 is consented by defendant No.4 by way of consent deed dtd. 6/8/2021. Thus, now plaintiff is entitled for specific performance of contract from defendant Nos. 1 and 2.

4] According to plaintiff inspite of repeated demands and issuance of notice, defendant Nos. 1 and 2 did not executed sale deed in his favour. There is possibility that, defendant Nos. 1 and 2 will create third party interest in the suit property during pendency of suit. Therefore, defendants be restrain by way of injunction. Moreover, defendants are also required to be restrain from obstructing plaintiffs peaceful possession over the suit property, till disposal of suit.

5] Defendant Nos. 1 and 2 by way of their say at Exh.28 admitted the suit transactions as well as agreements. According to them, they have received the consideration towards sale of suit property from time to time from plaintiff. They have also delivered possession of suit property to the plaintiff. However, due to outbreak of Covid-19 they are unable to repay the loan amount obtained by them from defendant No.3, within time. Defendant No. 3 is charging huge interest which is illegal and arbitrary. Unless and until their loan is repaid or settled with defendant No.3, they can not execute sale deed in favour of plaintiff as agreed by them. They submitted

that, if plaintiff will settled the entire loan with defendant No.3, they will execute sale deed in favour of plaintiff.

6] Defendant Nos. 4 though served with notice did not appeared and contested the application by filing their say. However, defendant No.3 is yet not served with notice or suit summons.

7] Heard Learned advocates for plaintiff and defendant Nos. 1 and 2. Gone through record. Considering rival contentions of both parties, following points arise for my determination and I have recorded my findings thereon along with detailed reasons to follow.

Sr.No	Points	Findings
1.	Whether plaintiff has made out prima facie case in his favour ?	.. Yes but only to the extent of defendant Nos. 1, 2 and 4
2.	Whether balance of convenience lies in favour of plaintiff ?	.. Yes but only to the extent of defendant Nos. 1, 2 and 4
3.	Whether plaintiff will suffer irreparable loss, if injunction is not granted in his favour?	.. Yes but only to the extent of defendant Nos. 1, 2 and 4
4.	What order?	As per final order.

REASONS**As to point Nos.1 to 3 :-**

8] In support of his claim, plaintiff has relied on original copies of suit agreements dtd. 20/11/2018, 6/8/2021 at Eh. 3/3 and 3/4 respectively. He further submitted copy of 7/12 extracts, copy of assessment for the year 2021-2022 in respect of the suit property issued by Grampanchayat Yadrav at Exh.3/1 and 3/5 respectively. The copy of electricity bill of the suit premises is at Exh.3/6. Office copy of notice issued by plaintiff to defendant Nos. 1 and 2, seeking specific performance of contract is at Exh.3/7. Office copy of notice of intimation sent to Sub-Registrar, Ichalkaranji is at Exh. 3/8. However, defendant Nos. 1 and 2 did not file any document on record in support of their contentions.

9] After going through above documents on record it appears that, defendant Nos. 1 and 2 agreed to sale suit property in favour of plaintiff. Defendant No.4 has given consent to the said agreement. The agreement to sale as well as consent deed are on record. They are registered documents. The contents of those documents are not denied by defendants. Copy of P.T.R. of the suit property and electricity bill on record shows that, defendants have acted upon the terms mentioned in the agreement to sale and have delivered possession of suit property in favour of plaintiff. As on today, plaintiff is in possession of the suit property. Plaintiff has paid

huge consideration to defendant Nos. 1 and 2 as well as defendant No. 3 on behalf of defendant Nos. 1 and 2. Said consideration is paid by cheque. It is not denied by any of the defendants.

10] The plaintiff is having apprehension that, defendant Nos. 1 and 2 will create any third party interest in the suit property. According to plaintiff, defendants are trying to alienate the suit property and obstructing plaintiffs possession over it. Admittedly suit will take its own time for its decision on merits. If defendant Nos. 1, 2 and 4 will create any obstruction to the plaintiffs possession or third party interest in the suit property, the entire purpose of suit will be frustrated. In such circumstances, the plaintiffs statement on oath supported by documentary evidence on record is sufficient to hold that plaintiff has made his arguable case which requires adjudication. Documents on record shows that, plaintiff had paid huge consideration to the defendants. In such circumstances, the status of property in dispute is required to be preserved as it is till decision of the suit. If it will be changed, third party interest will be created by defendant No. 1, 2 and 4 and then entire purpose of suit will be frustrated. Hence, In my opinion, plaintiff has made out his prima facie case in respect of defendant Nos. 1, 2 and 4.

11] Documents on record clearly shows that, plaintiff is in possession of the suit property. The suit is for specific performance

of contract. In such situation the ratio in case of *Nandkumar Gangadhar Agarmore V/s. Laxmibai Ganpat Khade and another reported in 1984 Mh.L.J. 915* relied by plaintiffs, will be perfectly applicable to the case in hand.

12] Hon'ble Bombay High Court in above case had laid down that, when suit is for specific performance of contract/agreement to sale and possession is with plaintiff, in such case plaintiff is entitled for relief of injunction.

13] Thus, in my opinion plaintiff has established his prima facie case. He had paid huge consideration for suit property. He is ready to perform his part performance instead of that, defendant Nos. 1 and 2 are not executing sale deed. Thus, balance of convenience lies in plaintiff's favour because, if defendant Nos. 1, 2 and 4 will create obstruction to plaintiffs possession or create any third party interest, the entire purpose of suit will be frustrated. Thus, I am of the opinion that, plaintiff is entitled for relief of injunction against defendant Nos. 1, 2 and 4.

14] However, record shows that, defendant Nos. 1 and 2 are borrowers of defendant No.3. They have obtained huge loan of Rs. 29 lacs in total from defendant No.3 by keeping suit property as a security. Record shows that, they have paid only Rs. 14,11,249/- to

defendant No.3 till date. They are having dispute about the rate of interest on said loan by defendant No.3. However, that issue can not be decided by this court in present suit. The documents on record shows that, defendant No.3 has priority of interest than that off the plaintiff against defendant Nos. 1 and 2 in respect of the suit property.

15] The entire application or plaint does not disclosed that on which particular date, time, defendant No.3's representatives have threatened plaintiff to dispossess from suit property. Nothing is brought on record by plaintiff showing that, he is having apprehension of illegal dispossession or creation of third party interest on the suit property by defendant No.3. Thus, plaintiff has failed to establish basic ingredients required to prove his prima facie case. The record shows that, there is huge encumbrance of defendant No.3 on the suit property. No material is brought before court regarding any illegal act or threat to the plaintiffs possession or infringement of plaintiffs any legal right by defendant No.3. Hence, no balance of convenience lies in favour of plaintiff.

16] For the reasons recorded above, in my opinion if injunction will be granted in favour of plaintiff against defendant No.3, irreparable loss caused to defendant No.3 because they will be prevented from doing their lawful act. There is huge charge of

defendant No.3 on the suit property. They have advanced huge loan amount to defendant No.1 and 2. They are having priority of interest than that of the plaintiff. Encumbrances on the property will transfer alongwith ownership of property. In such circumstances if injunction will be granted against defendant No.3 they will suffer irreparable loss which can not be compensated in money. On the contrary, if it will be refused no any loss will be caused to plaintiff.

17] For the reasons recorded above, I am inclined to answer point Nos. 1 to 3 accordingly and in order to answer point No.4, proceed to pass following order.

ORDER

1. Application is partly allowed.
2. Defendant Nos. 1, 2 and 4 are hereby restrained from obstructing plaintiffs peaceful possession over the suit property and creating any charge over it and alienating or transferring the same to any third party by any mode or manner till disposal of suit, without following due process of law.
3. Plaintiffs prayer for injunction against defendant No.3 is hereby rejected.
4. No order as to costs.

Date : 15/12/2021.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.