

MHKO090003922022



ORDER BELOW EXH. 5 IN SPL. CIVIL SUIT NO. 65/2022

1. Perused the application and written statement at Exh. 14.
Heard both the sides.

Admitted facts in the suit are as follows -

2. There is no dispute that the plaintiff is original owner of the suit property, bearing Gat No. 220, situated at village Dundage, Tal. Gadhinglaj. On 23.12.2019, one agreement was executed by the plaintiff in favour of defendant No. 1, whereby he allegedly agreed to sell the suit property to her for consideration of Rs. 28,00,000/-. The said agreement was notarized by Adv. Shri. B. B. Patil. Thereafter, sale deed bearing D.B. No. 730/2020 was executed between them on 26.02.2020, by which the suit property was allegedly sold for consideration of Rs. 6,00,000/-. Execution of these two documents is not in dispute. The dispute is only regarding its nature and transaction.

The plaintiff and defendants, in short, pleads as under -

3. The plaintiff contends that in the year 2019, he was in need of money. That time, defendant No. 1 was teacher. Relations between him and defendant No. 1 were very cordial. Defendant No. 2 is her husband. Hence, Rs. 9,00,000/- were borrowed by the plaintiff from her. Subsequently, for the security of that loan, the defendants obtained the aforesaid agreement dtd. 23.12.2019.

4. Later, in the year 2020, cable network business of the plaintiff went in loss due to Covid – 2019 pandemic. Defendant Nos. 1 to 3 took undue advantage of his economical crises and started demanding repayment of hand loan from him. The plaintiff contends that many times they pressurized him for that payment. On 26.02.2020, they came to him and told that he should come with them to bond writer - Kagwade for the purpose of preparing redemption deed of the suit property. According to the plaintiff, due to their pressure and misrepresentation, he executed the alleged document of sale under the impression that it is a redemption deed. However that time, these defendants falsely obtained sale of the suit property, by showing meager consideration amount of Rs. 6,00,000/-.

5. In short, averments in the plaint reveal that the plaintiff was under the influence of defendants and due to their active confidence, the aforesaid documents were executed. The suit property was never sold by him to defendant No. 1. Till today, it is in his possession. On the contrary, the defendants have categorically denied all these contentions. As per their version, these two documents are totally genuine and reliable. In fact, the contemporaneous agreement dtd. 26.02.2020 is false one, which the plaintiff obtained fraudulently from defendant No. 1. The transaction between the plaintiff and defendant No. 1 is of out of out sale. No such loan transaction ever took place between the two. The defendants further submit that plaintiff has deliberately shown less consideration amount in the sale deed for avoiding payment of stamp duty, which as per the agreement, he had to

bear. Thus, the defendants have categorically denied that the disputed transaction is of loan and prayed for rejection of the application. The plaintiff, on the other hand, is submitting that the suit property is still in his possession and the defendants are unauthorizedly doing construction in it.

6. Following points arise for my determination and my finding there on, with reasons, are as under -

Sr. No.	Points	Findings
1	Does the plaintiff prove that he has prima facie case in his favour ?	Yes, to the extent of alienation of the suit property ..
2	Does the plaintiff prove that he has balance of convenience in his favour ?	.. Yes, in above terms
3	Whether irreparable loss would cause to the plaintiff, if injunction is refused ?	.. Yes, in above terms
4	What order ?	.. As per final order

REASONS

As to point Nos. 1 to 3 -

7. At the outset, it is submitted by Ld. Adv. Shri. Magdum that there is no document on record to show that consideration amount of Rs. 28,00,000/-, shown in the agreement, was paid to the plaintiff. Moreover, according to him, why consideration in the sale deed dtd. 26.02.2020 was shown as Rs. 6,00,000/-, when as per the agreement it was fixed at Rs. 28,00,000/-. This fact

itself indicates that the disputed sale deed is nominal one. The contemporaneous agreement dtd. 26.02.2020 further fortifies this fact.

8. On the other hand, it is submitted by Ld. Adv. Shri. Farakate that the reason why consideration of Rs. 6,00,000/- was shown in the sale deed can be seen from the agreement itself. As per the agreement, registration charges and stamp duty was to be paid by the plaintiff and hence, to save his expenses, the plaintiff deliberately shown less consideration amount in the sale deed. In fact, it is the mischief of the plaintiff and defendant No. 1, being a simpleton lady, could not understand it. Further, Ld. Adv. Shri. Farakate submitted that in the light of registered document of sale, the plaintiff cannot claim title and possession over the suit property. Most importantly, the sale deed is of 2020 and the suit is filed in the year 2022. No explanation is given by the plaintiff that why this dispute was not raised during these two years.

9. I carefully heard submissions of both the sides and carefully perused these three documents on record. There is no dispute that on the basis of sale deed dtd. 26.02.2020, name of defendant No. 1 is mutated in the 7/12 record. Further, there is no dispute that defendant No. 1, with the help of other two defendants, is making construction in the suit property. In fact, it is boldly submitted by Ld. Adv. Shri. Farakate that defendant No. 1 is entitled to make construction in the suit property when she has acquired legal title over it. The plaintiff has no right to stop this construction or to disturb possession of defendant No. 1. Thus, the only question remains for consideration is, whether the

transaction of 2020 was of loan or out and out sale.

10. I agree with Ld. Adv. Shri. Farakate that in the agreement dtd. 23.12.2019, the plaintiff agreed to pay the stamp duty of sale deed. Therefore, it is possible that on his suggestion, consideration amount in the sale deed would have been shown as Rs. 6,00,000/-. I also agree with Ld. Adv. Shri. Farakate that to execute agreement dtd. 23.12.2019 or sale deed dtd. 26.02.2020, no fraud or misrepresentation was made by the defendants. At least, at this stage, there is no such evidence on record. The plaintiff has averred in the plaint that on 26.02.2020, the defendants came to his house and took him hurriedly to bond writer – Kagwade by saying that redemption deed is to be executed and on their say, he put his signatures on different papers. However, I do not find force in this pleading, particularly because on the very day, the contemporaneous agreement was executed in favour of the plaintiff. The plaintiff is also relying upon it. If he is relying upon that contemporaneous agreement, which was executed on the same date, how he can say that while executing sale deed, he was not knowing nature of it. Therefore, the pleadings regarding fraud or misrepresentation are not inspiring confidence.

11. The fact is that the plaintiff and defendants must be quite aware that what documents they are executing. Similarly, there is also no evidence on record to show that the plaintiff played fraud upon the defendants, while obtaining contemporaneous agreement dtd. 26.02.2020. Therefore, at this stage, it must be said that the plaintiff duly executed agreement of 2019 and sale

deed dtd. 26.02.2020. Whereas defendant No. 1 executed the agreement dtd. 26.02.2020 in favour of the plaintiff.

12. As I said above, it is not shown by the defendants that the contemporaneous agreement is fraudulently obtained by the plaintiff. If this agreement is perused, defendant No. 1 has specifically admitted to re-convey the suit property in favour of the plaintiff, on payment of Rs. 40,00,000/-. Defendant No. 1 has also agreed to execute registered document in this regard. Therefore, it can certainly be said that intention of the parties, while executing sale deed dtd. 26.02.2020, was something different. Contention of the plaintiff, that it was executed for the loan purpose, cannot be flatly refused. From language used in these two documents, two possibilities can be drawn, (i) that, all these documents must have been executed as security towards loan or, (ii) sale deed dtd, 26.02.2020 was executed with a condition of re-purchase. Hence, contention of Ld. Adv. Shri. Farakate that it is an out and out sale transaction cannot prima facie be accepted. The plaintiff has made an arguable case in this regard, which need to be inquired into.

13. Now, it must be seen, who is in possession of the suit property. The current 7/12 record and the photographs filed by both the sides duly show that as on today, defendant No. 1 is in possession of the suit property. Her possession cannot be equated with possession of a trespasser. It appears that when these documents were executed, she was inducted in the suit property. It is not prima facie proved by the plaintiff that despite execution of these two documents, possession of the suit property is with

him. Hence, I find that present possession of the suit property is with defendant No. 1. The plaintiff, in my opinion, has no right to disturb such possession, unless he proves his case by evidence.

14. However, defendant No. 1 cannot be allowed to transfer the suit property during pendency of suit. If she is permitted to make alienations, it will cause multiplicity of proceedings. If rights of the third parties are created in the suit property, the same will cause obstacle in deciding title of the plaintiff. When the plaintiff has raised serious questions regarding genuineness of sale deed dtd. 26.02.2020 and when the court finds substance in his contention, defendant No. 1 cannot be permitted to transfer this property during pendency of the suit. Granting such permission will cause serious prejudice to the rights of plaintiff. Thus, to this extent, I find that the plaintiff has proved his prima facie case.

15. As I said above, the plaintiff cannot claim possession over the suit property. Similarly, he has no right to stop ongoing construction. When defendant No. 1 is having title document with her, she cannot be restrained to enjoy with the suit property and most importantly, when she is not claiming any equity for such construction. Ultimately, if the plaintiff proves that the sale deed is nominal one, possession of the suit property can be granted to him by demolishing construction. There is no hurdle in it. However, as on today, he cannot stop it, when defendant No. 1 has invested huge money for it. For this purpose, balance of convenience is in favour of the defendants.

16. Similarly, as said above, regarding pendente lite transfers, the balance of convenience is in favour of the plaintiff. For such

pendente lite transfers only, the plaintiff will suffer irreparable loss, if application is rejected. Hence, I answer issue Nos. 1 to 3 in the affirmative to the extent of alienation by the defendants.

As to point No. 4 -

17. The discussion made hereinabove shows that the application is liable to be allowed partly. Hence, I pass the following order in answer to point No. 4 -

ORDER

Application Exh. 5 is allowed partly, as follows -

1. Defendant Nos. 1 to 3 or any other person claiming under them in any manner, are hereby restrained from creating any third party interest in the suit property, till decision of the suit.
2. Costs of the application will be costs in cause.

Date – 27.01.2023

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj