

Order Below Exh.5 in Regular Civil Suit No.17/2016.

1. The plaintiff has filed the present application under Order 39 Rule I of the Code of Civil Procedure praying the relief of the temporary injunction against the defendant.

2. **The plaintiff's contention in the present application is as under :-**

The plaintiff has filed this present suit praying the relief of Specific Performance of Contract and Perpetual Injunction against the defendant. At village Pimpalgaon Khurd, Tal. Kagal, Dist. Kolhapur farm land Gat No.158 having total area 2 hectare 37 Are out of it 26 Are's land with its four boundaries specifically mentioned at Para 1 of the application is the subject matter of the dispute. Hereinafter, called as a suit property.

Present suit property's ownership is given to the present defendant by the Government as a 'Project Affected Person'. In the year 2001 defendant's Appendix operation is been carried out, in which he incurred vast expenses. Due to which he had taken loans from the Sambhaji Society and also from the various people. To pay out the loan amount, defendant decided to sell the present suit property owned and possessed by him. In that respect present plaintiff agreed to purchase the suit property. The total consideration of Rs.1,45,000/- (Rs. One Lac Forty Five Thousand) is been agreed between plaintiff and the defendant. On 20/01/2003 an agreement to sell got executed in between plaintiff

and defendant in respect of suit property. On the same date itself present plaintiff paid an earnest amount of Rs.90,000/- to the defendant through the cheque of the bank Veershaiv Co-operative Bank Ltd., Branch- Kagal. On the same date itself possession of suit property is handed over to the present plaintiff. Since then, the plaintiff is possessing and cultivating into the suit property. Present plaintiff is taking various crops like jawar, soya bean and harbhara into the suit property. In the present year the plaintiff has taken the sugar cane crop into the suit property. In that respect he has made an agreement with the sugar cane factory and also paid the education tax. It was agreed between plaintiff and defendant that, present defendant will take requisite permission required for the completion of sale deed. It was also agreed to pay remaining amount of Rs.55,000/- (Rs. Fifty Five Thousand) within three months from the date of agreement to sell. As per agreed on 22/04/2003 present plaintiff paid Rs.55,000/- (Rs. Fifty Five Thousand) to the present defendant through a cheque of the above mentioned bank. Plaintiff was and is ready to make the sale deed as agreed into the agreement to sell. Plaintiff approached on various occasions to the defendant requesting him to fulfil the agreement. But, the defendant avoided to do so. Hence, on 02/12/2015 plaintiff issued a notice to the defendant through the Advocate. Defendant denied to take the same and hence failed to answer the same. Having such a position, on 17/01/2016 in the morning at 10.00 a.m. while plaintiff was doing the work into the suit property, defendant came there and obstructed the plaintiff's

possession into the suit property. Thus, the plaintiff's possession into the suit property needs to be protected. Hence, on these ground prayed to issue temporary injunction order restraining the defendant from obstructing the plaintiff's peaceful possession into the suit property till the final decision of the suit.

The plaintiff in support of his pleading has filed the following documents :-

1. The 7x12 extract of Gat No.158.
2. The original agreement to sell document.
3. The copy of the notice sent to the defendant and its envelop.
4. Education tax receipt.
5. Affidavits.

In support of the pleading, the plaintiff has relied on following citations :-

- 1] 2000 DGLS 1679.**
- 2] 2004 (3) Mh.L.J. 1131.**

3. On the other hand, the defendant has filed his say at Exh.15 denied contents into the application and objected the same. The defendant's submission is as under :-

Admitted receiving of present suit property by the defendant from the Government as a 'Project Affected Person'. He denied execution of any agreement to sell of the suit property in favour of present plaintiff. The agreement to sell document produced by the plaintiff is false and bogus one. Present defendant

is an illiterate person and present plaintiff by taking the benefit of same by playing fraud on the plaintiff got executed the false agreement to sell document. Present plaintiff fraudulently taken the thumb impression of present defendant and thereby himself withdraw the cheque amount. Suit property's possession is never handed to the present plaintiff, but the same is with the present defendant. Present defendant is cultivating the suit property and taking crops into it. As the suit property's possession is with the defendant, therefore, there is no question of obstruction to the plaintiff's possession. Only to grab defendant's property on the basis of false documents plaintiff has filed this suit. Hence, on these ground prayed to reject the present application.

In support of his pleading the defendant has filed following document :-

1] Affidavits.

4. After going through the material available on the Court record, following points arises for my consideration with its findings and reasons given below.

No.	Points	Findings
1.	Whether there is <i>prima facie</i> case in favour of the plaintiff ?	Yes.
2.	Whether the plaintiff proves that, the balance of convenience lies in his favour ?	Yes.
3.	Whether the plaintiff proves that, the irreparable loss will cause to him, if the	

	temporary injunction is not granted in his favour and against the defendant ?	Yes.
4.	Whether the plaintiff is entitled to relief of the temporary injunction as prayed ?	Yes.
5.	What order ?	As per final order.

Reasons :-

5. Heard the learned Advocate for the plaintiff and the defendant at length.

As to the Points No.1 to 5 :-

6. Prior to dealing with this application, I will like to prefer the relevant provision relating to the temporary injunction contained in the Order 39, Rule I of the Civil Procedure Code.

“Order 39 Rule I of Civil Procedure Code :- Cases in which temporary injunction may be granted :— Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.”

7. The learned Advocate for the plaintiff argued that present suit property is acquired by the Government and the same is allotted to the defendant as a 'Project Affected Person'. In the year 2001, present defendant undergone Appendix surgery. He was a need of money due to illness and also due to debt. So defendant decided to sell the suit property to the present plaintiff. On 20/01/2003 an agreement to sell got executed in respect of suit property in between plaintiff and defendant. Earnest amount is paid through the cheque. An prior permission of the Collector was agreed to be taken. The rest of the remaining amount was also paid by the plaintiff. These all facts shows plaintiff has performed his part of the agreement i.e. paid the entire amount and now it is the duty of the defendant to perform his part of the agreement. But, the defendant is refusing to perform his part of the agreement. On the contrary, defendant is disturbing the peaceful possession of the plaintiff into the suit property. On the other hand, the learned Advocate for the defendant argued that suit is not filed within the limitation. The alleged agreement is not an registered document.

Present defendant's name is present into the cultivation column of the suit property. Present defendant is the person who is into the actual physical possession of the suit property. No any agreement executed in favour of the plaintiff. By misusing the thumb impression of the defendant and playing fraud on the defendant plaintiff got executed false documents.

8. Now, in the present application what needs to be seen is plaintiff's possession into the suit property and obstruction to the same by the defendant. Firstly, it needs to be seen whether plaintiff proves his possession over the suit property or not. For deciding the same, the documents filed on the Court record needs to be looked into. The plaintiff has produced the original agreement to sell document dated 20/01/2003 along with Exh.3. Present defendant has not denied his thumb impression over the agreement. But, alleging the same was taken by playing fraud on the defendant. Perused the said agreement. The same is executed by the present defendant in favour of the present plaintiff. Subject matter of the agreement is the present suit property. The gat number and four boundaries mentioned into the agreement are identical with the present suit property. In the said agreement there is mention of surgery of Appendix of the present defendant and for that economic need of present defendant. The same is the reason mentioned into the present application. In the said agreement total consideration amount of Rs.1,45,000/- (Rs. One Lac Forty Five Thousand) is agreed. Paying of 90,000/- (Rs. Ninety Thousand) as

an earnest amount is also mentioned. The most important averment into the agreement is handing over of the possession of the suit property by the defendant in favour of present plaintiff. The defendant's defence is that by misusing thumb impression of the defendant and playing fraud on him the said agreement got executed. The agreement is of the year 2003. Allegations in respect of fraud and misuse are been made in the year 2016. If at all as submitted by the defendant by playing fraud and misusing his thumb impression document got executed, in such a situation, he was supposed to approach to the Police in respect of plaintiff's act. He was supposed to lodge criminal case against the plaintiff. In the present case no any counter claim filed by the defendant in that respect and more also no any separate proceeding filed. These aspect shows that present defendant kept mum for all these long years without using any of the rights. Nothing on the Court record produced by the defendant to show that against the act of plaintiff he himself taken any steps. On the contrary, it appears that defendant refused to take notice sent by the plaintiff, and after filing of the present suit for the first time defendant put forth the defence of fraud and misuse. No explanation is offered by the defendant why he kept mum and not taken any action against the plaintiff for all these long years in respect of the agreement. It is not the case of defendant that he was unaware of taking of his thumb impression on the agreement. Considering these aspect *prima facie* appears that except the bare pleading there is nothing on the Court record adduced by the defendant to *prima facie* prove

misuse of the thumb impression and fraud on him. The bare pleading is itself not sufficient enough. Another defence taken by the defendant is that amount of cheque is taken by the plaintiff himself. It is not the defence of defendant that the cheque was dishonoured and returned unpaid. The defence is plaintiff himself taken the cheque amount. If the cheque is drawn on the name of defendant, in such a situation, the bank gives the money to the defendant only and not to any other person. No any prudent person even though he may be illiterate will allow to be taken away the consideration amount of the agreement in respect of his owned property. If at all the same was happened, the defendant was supposed to approach into the Police. Nothing on the Court record to show that the defendant did the same. These aspect shows that defence of taking the consideration amount by the plaintiff himself is highly improper and the same is not believable.

9. The defendant's another defence is that the suit is not within the limitation. The limitation issue is a mixed question of law and fact. The same cannot be gone into at this primary stage. The same will be very well decided at the hearing, on the evidence of both the side. The defendant relied on the 7x12 extract of the suit property Gat No.158 to prove his possession over the suit property. The learned Advocate for the defendant submitted that present defendant's name is present to the cultivation column of the suit property. The 7x12 extract of the properties are used by the Revenue department and the same are for the fiscal purpose only.

10. The Hon'ble High Court in the case of Y. Vijayabharathi Vs. Y.Manikyamma {1998 (2) ALT 623}, following the decisions of the Apex Court and considering the evidentiary value of the entries in revenue records observed as follows :-

*“8. ... Although the entries in the Record of Rights register enjoy the presumption in law that the entries are true unless the contrary is proved and may not be discredited, the records of rights are no records of documents of title. Such a question has been clearly dealt with by the Hon'ble Supreme Court in **Nagarpalika, Jind v. Jagat Sing** {[1995]3SCR9}. And following **Nirman Singh v. Lal Rudra Pratap (AIR 1926 PC 100)**, it has been held that such documents are more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid. In other words, the records of rights are the documents ensuring the person to be made liable to pay the revenue and for no other purpose. However, it may not be hastened to be decided that such entries have got corroborating value regarding the possession of a party in regard to an immovable property.”*

11. Hence, as per the above judgment the 7x12 extract entries can be used only for the corroborating purpose. Without any cogent and material evidence the 7x12 extract entries itself cannot form the sole basis to prove the possession. Except the

7x12 extract entry, the defendant has not adduced any material, cogent and sufficient evidence to prove his possession over the suit property. On the contrary, the original agreement to sell dated 20/01/2013 *prima facie* shows execution of agreement to sell in respect of suit property in between plaintiff and defendant. The said agreement *prima facie* shows handing over of the possession in favour of the present plaintiff. The education tax receipt produced by the plaintiff shows payment of tax by the plaintiff in respect of the suit property. More also, one Rajendra Dinkar Salokhe through his affidavit upheld contention into the agreement, execution of the agreement and possession of the suit property by the plaintiff. Hence, the original agreement to sell document, the tax receipt and the oral evidence of one witness *prima facie* shows possession of suit property by the plaintiff. *Prima facie* these documents are sufficient enough to establish plaintiff's peaceful possession into the suit property.

12. After considering the plaintiff's possession, it needs to be seen, whether defendant obstructing the plaintiff's possession. As per the above discussion, the plaintiff has able to prove his possession into the suit property. The denial of execution of the agreement, denial of handing over of the possession by the defendant itself amount to the obstruction to the plaintiff's possession. If the plaintiff's possession is not protected, in such a situation, he will suffer an irreparable loss as there is possibility of defendant ousting and obstructing the plaintiff's possession.

Thus, the balance of convenience and an irreparable loss also lies in favour of the plaintiff, therefore, plaintiff's possession into the suit property needs to be protected.

13. Thus, considering the evidence on the Court record and above discussion, it appears that the plaintiff is able to satisfy all the ingredients of Order 39 Rule I of the Civil Procedure Code. After considering all above discussion, at this primary stage, there is material evidence on the record to support the plaintiff's pleading. Thus, I answer point No.1 to 4 in the affirmative. Hence, the plaintiff is entitled to the relief of the temporary injunction as prayed. Hence, in order to point No.5, I pass the following order :-

ORDER

- 1] The application is allowed.
- 2] The defendant is hereby restrained by granting the temporary injunction against him from obstructing the plaintiff's possession into the suit property till the decision of the suit.
- 3] No order as to the costs.

Sd/-

Date :-07/11/2016.

Place :- Kagal.

(Chetan Jagtap)
Joint C.J.J.D. Kagal.

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	Sandip Maruti Patil (L.G.)
Name of Court	Jt. Civil Court & J.M.F.C. Kagal.

Date of Dictation	07/11/2016.
Judgment signed by the P.O. on	07/11/2016.
Judgment uploaded on	07/11/2016.