

MHKO140007042023



**ORDER BELOW EXHIBIT- 05
IN RCS No. 145/2023**

Youraj Vajjnath Shinde.
Vs.
Jijasaheb Naikojirao Desai and Ors.

(passed on- 20/11/2023)

1. This is an application for grant of temporary injunction and the plaintiff therein prayed for ad-interim ex-parte injunction and in alternative prayed to grant status-quo. It is contended that, the plaintiff is absolute owner and possessor of the suit property he has purchased it from defendant No.3 by registered sale deed. However, the defendant No.1 has no right to execute any document in favour of defendant No.2. In spite of that defendant No.1 executed gift deed in favour of defendant No.2. Defendants are falsely recorded their name in the revenue record of the suit property and thereby trying to dispossess the plaintiff. Hence, present application for grant of ad-interim injunction.

REASONS

2. I have perused the entire application along with the documents. Heard the learned advocate for the plaintiffs.

3. **Order 39 Rule 3 of Code of Civil Procedure** provides that the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party so it is clear in view of aforesaid provision that, issuance of notice is a general rule and granting injunction without notice is an exception. Therefore it is the duty of plaintiff to satisfy the court that if the ad interim ex parte injunction is not granted then the purpose of granting injunction would be defeated by delay.

4. The Hon'ble Supreme Court in *Morgan Stanley Mutual Fund vs Kartick Das (1994) 4 SCC 225* Provided certain guiding principles in relating to the grant of an ad interim injunction., the Hon'ble Supreme Court held that, - *As a principle, ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex-parte injunction are-*

- a) *Whether irreparable or serious mischief will ensue to the plaintiff,*
- b) *Whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve,*
- c) *The court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented,*
- d) *The court will consider whether the plaintiff had acquiesced for sometime and in such circumstance it will not grant ex-parte injunction,*
- e) *The court would expect a party applying for ex-parte injunction to show utmost good faith in making the application,*
- f) *Even if granted, the ex-parte injunction would be for a limited period of time*
- g) *General principle like, prima facie case, balance of conveniences and irreparable loss would also be considered by the court.*

5. Present suit is filed for perpetual injunction. The alleged cause of action is shown as on and from 21/08/2023 and on wards. It appears that round of litigation is pending before revenue authority regarding suit property. It is true that it prima-facie appears that the material right

to property is involved in the matter. But some period of time has been elapsed from the alleged cause of action. So considering these facts, I am of the view that, if the ex party injunction is not granted then the purpose of granting injunction would not be defeated by delay. Considering the fact and circumstances of the case I am of the view that, proviso of Order 39 Rule 3 of the Code of Civil Procedure will not applicable as there appear no urgency. Therefore the defendants must be given an opportunity of being heard before granting ad interim injunction. Therefore I am of the view that the application for temporary injunction can be decided on merit after hearing both parties. In view of aforesaid discussion I pass following order.

ORDER

Prayer for grant of ad interim/ex-parte temporary injunction is rejected.

Issue show cause notice to the defendant as to why temporary injunction shall not be granted in favour of plaintiff till the decision of the suit.

E.B and S.B allowed if prayed.

Date:20/11/2023

sd/-

[Waman D. Jadhav]

Jt.Civil Judge Junior Division, Chandgad.

[Judge Code- MH3143]