

ORDER BELOW EXH.49
IN REG.CIVIL SUIT NO.34/2014

Defendant has filed this application under Order 39 Rule 2 of Code of Civil Procedure.

02. Defendant no.1 specifically described the suit property i.e., 25R of land in block no.298 at village Uchat, in para-1 of the application. It is hereinafter referred as “*suit property*”.

03. Defendant no.1 averred that on 21/02/2005 Maruti Kokate and on 09/08/2008 Ganpati Kokate executed a mortgage deed of the suit property in her favour and accepted Rs.30,000/- each. The period of mortgage was for 10 years and defendant no.1 was cultivating the suit property with the help of Vasant Sakharam Patil.

04. Maruti Kokate and Ganpati Kokate during the existence of the mortgage deed and prior to expiration of period of the mortgage executed sale deed of the suit property dated 21/05/2013 in favour of plaintiff. She averred that possession was not delivered to the plaintiff. She averred that she is in possession of the suit properties since the date of mortgage deed. She prayed that her possession be protected and the suit property should not be further alienated.

05. Plaintiff filed reply to the application at Exh.51. He has denied all the contentions in the application. He has denied that on 21/02/2005 or on 09/08/2008 any mortgage deed was executed in favour of defendant no.1. Plaintiff purchased suit property by way of sale deed and is in possession of the suit property. Defendants were

never in possession of the suit property. He therefore prayed that the application be rejected.

06. Considering the application, reply and the arguments advanced by both the learned advocates following points arise for my determination I have recorded my findings against them for the reasons given there under-

<u>SR.</u> <u>NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaintiff has made out a prima facie case?	In the negative
2.	Whether balance of convenience lies in favour of plaintiff?	In the negative
3.	Whether plaintiff will suffer irreparable loss if injunction is not granted?	In the negative
4.	What order?	Application is rejected.

REASONS

As to point Nos.1 to 4 :

07. Defendants are claiming possession over the suit property on the basis of mortgage deed dated 21/02/2005 and 09/08/2008. Defendants have not placed on record the mortgage deed dated 09/08/2008. Mortgage deed dated 21/02/2005 is placed on record. The said document is not registered. In the said document it is mentioned that today the defendants should be take possession of the suit property and cultivate the same. It is not clear whether defendant actually took possession of the suit property as per the said agreement dated 21/02/2005.

08. If at all any such agreement or mortgage deed was executed and the property was possessed by defendants or Vasant Sakharam Patil the name of defendants or Vasant Sakharam Patil should have been reflected in the cultivation column of the suit property. The 7/12 extract of the suit property stand in the name of Ganpati Kokate and Maruti Kokate. The names of defendants donot appear in the 7/12 extract. It can therefore be concluded that the agreement dated 21/02/2005 was not acted upon.

09. It is not disputed that Ganpati Kokate and Maruti Kokate are the owners of the suit property. The sale deed standing in favour of plaintiff is registered instrument. On the contrary the agreement dated 21/02/2005 is unregistered and insufficiently stamped instrument. Hence the registered sale deed would prevail over the agreement dated 21/02/2005.

10. Even if for the sake of arguments the case of defendant is accepted. It is clear that the suit property and some other properties were mortgaged for Rs.30,000/- with defendant no.1. If Maruti Kokate and Ganpati Kokate couldn't return the mortgaged money within period of 10 years only then they would have to executed a sale deed of the suit property in favour of defendant no.1. In other words, on expiration of period of 10 years Maruti Kokate and Ganpati Kokate had option of returning the amount i.e., mortgaged money. In other words, defendant no.1 could be compensate in money and hence she is not entitled for temporary injunction.

11. Defendant no.1 have not prima facie establish her possession over the suit property. Defendant no.1 can be compensate in money and hence would not suffer irreparable loss, balance of convenience is not in favour of defendant no.1.Hence, I answer all the points in the negative and in answer the point No.4 pass following order.

ORDER

01. Application is rejected.

02. Costs in cause.

Date :- 06/04/2018

(A.A.Walujkar)
Civil Judge Junior Division
Malkapur-Shahuwadi.

CERTIFICATE

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

Name of the Stenographer : S.A.SHINDE

Name of the Court : A.A.Walujkar, C.J.J.D & J.M.F.C.
Malkapur-Shahuwadi,

Date of Order : 06/04/2018

Order signed by the presiding
officer on : 06/04/2018

Order uploaded on : 17/04/2018