

**ORDER BELOW EXH. 5**

1.] Perused contents of the application supported with affidavit and say filed. Heard learned Adv. G. G. Vhatkar for the plaintiffs and learned Adv. P. D. Patil for the defendants at length. Read the citations of Hon'ble Supreme Court and Hon'ble Higher Courts, relied upon by the parties.

2.] This is an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction restraining the defendants creating third party interest and from disturbing their peaceful possession on the suit property mentioned in para 1 of the application during pendency of this suit.

3.] The present Suit is for Declaration and Injunction. It is the case of the plaintiffs that the suit property in para 1 is situated in the village Giroli, Tal-Panhala, Gat no. 121, admeasuring total area of 1H.9R out of which 0.41R is purchased from the predecessor of defendants, Shripati Sakharam Salokhe vide registered document no.1166/1979 dtd 28/12/1979. It is further stated by the plaintiffs that the suit property was previously owned by the predecessor of plaintiffs i.e Mahadev Ramchandra Patil and out of which some part was sold to one Pattu Hari Powar and some part to Bala Rama Patil and 0.41R was sold for monetary consideration by him to the predecessor of defendants (Shripati

Sakharam Salokhe), as he was in need of money, vide registered Sale Deed 272/1979 dtd. 26/3/1979. Later on he again purchased the same property from the defendants' predecessor vide the document no. 1166/1979 as described above. The predecessor of plaintiffs and now plaintiffs are in possession of the suit property since then. Plaintiffs further stated that now the defendant nos. 1 to 5 have sold the property to defendant no.6 for a consideration and in regard with the diary mutation entry of 1228. 7/12 extracts is in the name of defendant no.1. Plaintiffs further stated that defendants are not having transferable right and are continuously trying to disturb their possession over the suit property. Hence, they filed the suit and prayed for granting temporary injunction by restraining the defendants from dispossessing them without following due course of law and from creating third party interest over the suit property.

4.] Defendants have presented their written statement cum say at Exh.13 and thereby contested to the prayer of temporary injunction made by the plaintiffs. Vide their say they contended that the alleged sale deed of 1166/1979 is forged and never executed or prepared by their predecessor. They further contended that their predecessor always used to give a signature on the document and never gave mere thumb impression. They also contended that the entry of defendant on 7/12 extracts is made vide the diary entry no. 1228 dated 20/9/1988 and since then the entries are continued and also further contended that after the registered document of 272/1979 the names of defendant are entered and since then the plaintiffs never raised any grievance before any forum. Later they have irrigated the land in 1983-84 then also the plaintiffs have not taken any objection on

the basis of alleged 1166/1979 sale deed, and argued that this is sufficient to show that the alleged document is forged and illegal. Hence, prayed to reject the application.

5.] In view of rival pleading and contentions of both the parties following points arise for my determination. I have noted my findings on all points for reasons mentioned below:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Do plaintiffs prove that they are having prima facie case ?	In negative
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	Do not survive
3.	Do plaintiffs prove that they will suffer irreparable loss by refusal of temporary injunction?	Do not survive
4.	What order?	Application is rejected

REASONS

6.] AS TO POINT NO.1 to 3 :- As point nos. 1 to 3 are hinge upon the same pivotal hence, to avoid the repetition of facts point nos. 1 to 3 are clubbed together for discussion. Before deciding the application one need to look into the provision of law.

Law:

In Indian legal system the law of injunction is mainly governed by Order 39 and sections 36 and 42 of the Specific Relief Act. Section 94(c) of the Code of Civil Procedure also gives supplemental provision for grant of temporary injunction. It is also settled that there is no bar in granting injunction or supplementary orders under section 151 of the Code of Civil Procedure for compliance of injunction in just cases.

Temporary Injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. Its purpose is to prevent dissolution of the plaintiff's rights. The main reason for use of a temporary injunction is the need for immediate relief. Grounds of temporary injunction provides that temporary injunction may be granted by the court when:

- i. Property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of the decree.
- ii. Where defendant threatens or intends to remove or dispose of his property with a view to defraud creditors.
- iii. where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute.
- iv. Defendant is about to commit breach of peace or contract or otherwise (O.39 R.2)
- v. Where the court is of opinion that interest of justice, so required.

Thus, burden is on the plaintiff praying for the relief. Mere proof of one of the above conditions does not entitle a person to an order of temporary injunction.

7.] From the present application it is observed that the parties to the suit do not argue with regard to the nature of the suit property. Now to prove the prima facie case plaintiff need to show that there is prima facie right and infringement of such right is a condition precedent for grant of temporary injunction, however it should not be confused with a case proved to the hilt. In deciding

prima facie case the case should be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced by him. Here in the case in hand it is seen that the predecessor of defendants have purchased the suit property by giving his authorised signature, but the alleged 1166/1979 does not bear his signature. So also the entry on 7/12 extracts is made in 1988 and since then no efforts have been taken by the plaintiffs to get the entries corrected if at all the suit property was again purchased by their predecessor. If the predecessor of the defendants was able to sign the documents then why he gave a thumb impression without any sufficient reason is not brought on record. The alleged document of 1166/1979 lacks sanctity and genuineness. It is clear that thorough trial is not expected at this stage but minimum essential ingredient and what imminent danger to the suit property is to be brought on record. This is not made clear by the plaintiff. Photographs relied upon by the plaintiffs cannot be solely relied upon at this stage as it requires corroborative evidence to prove the same. One cannot claim interim relief by disturbing the right of other without themselves not disclosing the material facts. The alleged sale deed is not challenged anywhere since 1979. At this stage one need to look into the disturbance of possession at the hands of defendants if injunction is to be granted. Plaintiffs are admitting that the entries of defendant no.1's name are found on the assessment records. They are not challenged anywhere. Plaintiffs will have to stand on their own feet to show that the case is prima facie in their favor. The application does not show any incidence of actual obstruction to the possession of plaintiff over the suit property prior or after filing the instant application. Not only this but the application also does not show the continuous obstruction or disturbance to the possession of the plaintiffs over

the suit property. From the entire record it is nowhere seen that there is an actual interference with the possession of plaintiffs and irreparable loss to them. Hence, I answer point no.1 in negative. As no prima facie case is seen to have been established from the record before this court, point nos. 2 and 3 do not survive, hence answered in negative.

8.] AS TO POINT NO 4 :- I, thus find no imminent danger to right of plaintiffs in respect of the suit property. In such a situation, it cannot be said that the plaintiffs have prima facie case and they would suffer an irreparable loss and also that the balance of convenience goes in favour of the plaintiffs. With these observations, I have replied the point Nos.1 to 3 in the negative. Hence, I draw the conclusion that plaintiffs are not entitled to seek a relief of temporary injunction against the defendant no.1. With this conclusion I proceed to pass following order.

ORDER

- i) The application at exh.5 is hereby rejected.
- ii) No order as to costs.
- iii) Parties to proceed with the suit.

Date :- 29/05/2023

(K.J.Khomane)
Civil Judge Junior Division,
Panhala