

MHLA090000242019

**ORDER BELOW EXH.5 IN R.C.S.NO.03/2019**

This is an application filed by the plaintiff seeking relief of temporary injunction against the defendants under provisions of Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908.

Brief Facts of The Application are as follows:-

2. It is the case of the plaintiff that defendant no.1 is a money lender. The plaintiff, defendant nos.1 and 2 are having cordial relationship with each other. The name of plaintiff is deleted by defendant no.3 from possession column. The Plaintiff is the owner of milkat no. 4-1-784 (old) new milkat no.4-2-1001 ad-measuring East-West 30 feet, South-North 45 feet, four boundaries are mentioned in the application. The Plaintiff and defendant no.2 vide registered sale-deed bearing no.3630/2002 dated 16.10.2002 out of survey no.335 purchased plot no.1 for consideration amount of Rs.41,000/-. The plaintiff has constructed 5 room building on the said plot.

3. The plaintiff demanded from defendant no.2 the construction Cost of Rs.2,50,000/- however, defendant no.2 refused to pay the construction Cost to the plaintiff. The dispute between plaintiff and defendant no.2 was compromised, at that

time, it was agreed that plaintiff will pay to defendant no.2 half amount of purchased the plot according to the market value of Rs.65,000/-. Plaintiff gave amount of Rs.29,000/- to defendant no.2. Remaining amount of Rs.36,000/- was given by mortgaging the plot with the defendant no.1. The defendant no.2 has obtained all the amount of purchased plot. At the time defendant no.1 has relinquished his right in favour of the plaintiff. Plaintiff and defendant no.2 have executed nominal sale-deed in lieu of mortgage deed. After the compromise between plaintiff and defendant no.2, as plaintiff had made construction in the said plot, plaintiff demanded amount of Rs.50,000/- from defendant no.1. Defendant no.1 agreed to pay amount of Rs.36,000/- subject to terms and conditions.

4. At that time nominal sale-deed was executed between plaintiff and defendant no.2 it is bearing no.2954/2008 dated 06.06.2008. Defendant no.2 and defendant no.1 have executed sale-deed in favour of the plaintiff. Since 2008 plaintiff is owner and possessor of the suit property, accordingly revenue record is mutated in the name of the plaintiff. The plaintiff has been paying electricity bill, water bill since 2017-2018. Defendant no.1 has not executed sale-deed in favour of the plaintiff because market value of the property is increased. Defendant is trying to grab the property of the plaintiff. Hence, plaintiff is constrained to file the present suit.

5. Defendant no.1 filed his Written-Statement at Exh.29 and contended that, suit of the plaintiff is false and misleading.

The plaintiff on 06.06.2008 for his household expenses and repayment of loan have executed sale-deed in favour of the defendant no.1. Since then defendant is owner and possessor of the suit property. Defendant no.1 is running grocery shop at Udgir and he has obtained business loan of Rs.10,00,000/- from Udgir Urban Co-operative Bank. At that time defendant no.1 in respect of suit property and other property have executed registered mortgage deed on 1.10.2012. The plaintiff by misrepresentation mutated his name in possession column of the suit property. The name of the plaintiff has been deleted from possession column. Hence, defendant no.1 prayed that, suit of the plaintiff may be dismissed.

6. Defendant no.2 filed his Written-Statement at Exh.35 and contended that, suit of the plaintiff is false and misleading. After compromise between plaintiff and defendant no.2 plaintiff has constructed house over the suit property and defendant no.2 is not liable to pay any amount to the plaintiff. Hence plaintiff demanded interest amount of Rs.50,000/- from defendant no.1 is false. The original price of the plot is Rs.41,000/- and plaintiff has constructed 5 rooms house over the suit property. The sale-deed executed in favour of defendant no.1 is for Rs.36,000/- along with principal amount and interest. Plaintiff is owner of the suit property. The present suit which filed by the plaintiff to the intention to grab the suit property. Hence, defendant no.1 prayed to dismiss the suit.

7. Heard the Ld. advocate Shri. S.S. Deshmukh for the

plaintiff and Ld. advocate Shri. R.A.Patil for defendants. From consideration of facts & contents of the application following points arises for my determination to which I, have recorded and my findings for reasons stated below:-

Sr. No	Points for determination	Findings
1.	Whether plaintiff has made out prima-facie case in his favour ?	No
2.	Whether balance of convenience lies in favour of the plaintiff ?	No
3.	Whether irreparable injury is likely to cause to the plaintiff if application is rejected ?	No
4.	What order ?	Application is rejected

8. Plaintiff in support of his contentions has filed on record following documents along with Exh.4:-

- i) Assessment Extract of milkat no.4-2-1001
- ii) Assessment Extract of milkat no.4-2-1001
- iii) Assessment Extract of milkat no.4-1-784
- iv) Assessment Extract of milkat no.4-2-1001.
- v) Tax receipts (total 6)
- vi) Sale-deed dated 16.10.2002
- vii) Sale-deed dated 06.06.2008

REASONS**AS TO POINT NOS.1 TO 4:-**

9. In order to succeed and while determining the temporary injunction application the plaintiff has to prove three essential ingredients i.e. prima-facie case in his favour, balance of convenience lies in his favour and irreparable injury is likely to cause to him if injunction is not granted in his favour. At this juncture it is also relevant to note provisions of O. 39 R. 1 of the C.P.C which runs as under:-

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 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 dispossession 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.

10. At this stage recourse to documentary evidence produced by the plaintiff is necessary. On the perusal of sale-deed dated 16.10.2002 it appears that, plaintiff and defendant no.2 have purchased plot no.1 Grampanchayat milkat no.4-1-784 out of survey no.335 South-North 45 feet, East-West 30 feet total 125.46 Sq.metre for consideration amount of Rs.41,000/-. On perusal of sale-deed dated 6.6.2008 it transpires that, plaintiff and defendant no.1 have sold the above mentioned property to defendant no.1 for consideration amount of Rs.36,000/-. On the date of execution of sale-deed, possession has been transferred to defendant no.1. Now plaintiff is claiming relief of declaration and perpetual injunction against defendant nos.1 to 3. However, by way of sale-deed dated 06.06.2008 defendant no.1 has become absolute owner of the suit property. Also on the perusal of assessment extract produced by the plaintiff dated 12.12.2018. it appears that, name of the defendant no.1 mutated in the owner column and name of the plaintiff has been deleted from the possession column. Prima-facie plaintiff is not in possession of the suit property. Hence there is no question of granting injunction. Moreover, plaintiff

has not come in the clean hands to the Court of law. At this stage it is relevant to note case law Hon'ble Bombay High Court in case of **Shri Vasudev Nene and Ors. Vs. Dattatraya Raghunath Jog : 2000 (3) ALLMR 193** has held that,

“In a matter where a party seeks an equitable relief, the party has to approach the court with clean hands and should not suppress any material fact or document, otherwise he or she cannot seek indulgence of the court for any equitable relief”.

11. Prima facie case is not in favour of the plaintiff. Balance of convenience does not lie in favour of plaintiff because no mischief is likely to be caused to the plaintiff, if injunction is not granted. No irreparable injury is likely to be caused to the plaintiff if temporary injunction is not granted. In the light of conspectus of above discussion I, answer point no.1 to 3 in negative. In answer to point no.4 I, proceed to pass the following order:-

ORDER

1. Application is Exh.5 is rejected
2. Costs shall follow the event.

Udgir
Date: 06/04/2024

(K. A. Powar)
2nd Civil Judge, Jr. Dn. Udgir