



R.C.S.No.64/2021

**Mahamud Nausar Shaikh Vs. Nandkishor
Ramnath Rathi and other 1**

CNR. No. MHLA130004002021

ORDER BELOW EXH.5

(Passed on 04th May, 2023)

This is an application filed by the applicant/ plaintiff under Section 94 (c) read with Rule 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 for grant temporary injunction restraining the defendants from obstructing, interfering, alienating or creating third party interest over the suit property.

2] The plaintiff contended that on 0/05/2011 he purchased suit property from one Mohan Shankarrao Thakur. The plaintiff used portion of plot for his hotel business for 9 years. Then after plaintiff sold the suit property to defendant No.2 due to his economic problem for security of Rs.1,00,000/-. However, plaintiff did not deliver possession of suit property to defendant No.2. Plaintiff demanded the recovery of suit property in the name of his son Akbar Shaikh by repaying Rs.1,00,000/- with interest. However, the defendant No.2 without giving knowledge to the plaintiff sold suit property to defendant No.1 by sale deed bearing number day book No.335/2021.

3] The defendant intentionally obstructed and interfere the possession of plaintiff over the suit property on the basis of said sale deed. Plaintiff objected the mutation entry in the name of defendant No.2. Plaintiff is ready to repay the hand loan amount of Rs.1,00,000/- to defendant No.2. On 15/03/2021 the defendant No.1 forcibly tried to take possession of suit property. The plaintiff requested to defendant No.1 not to interfere and obstruct on the fact that the suit property sold to defendant No.2 for security of Rs.1,00,000/- without delivery of possession of suit property. It is further contended that the said sale deed was nominal one and it not acted upon till today. The defendant No.1 refused the request of plaintiff in respect of obstruction and interference over the suit property. It is necessary to restrain the defendant from dispossessing the plaintiff from suit property. He prayed to allow the application.

4] The application is proceeded ex-parte against defendant No.2.

5] On the other hand, the defendant No. 1 filed purshis below Exh.34 to treat his written statement as say of this application. The defendant No.1 denied the contention of application. It is contended that on 03/07/2018 plaintiff sold suit property to defendant No.2 by sale deed bearing number 14640/2018 and delivered the possession of it. Further on 01/03/2021 the defendant No.2 sold suit

property to defendant No.1 by sale deed bearing number 335/2021 with delivery of possession of suit property. Then after the defendant No.1 is owner and possessor of suit property. The plaintiff has no concern, any kind of right and interest in suit property.

6] The plaintiff did not mention the plot number and about N.A. in his pleadings. The sale deed executed by the plaintiff is real transaction of sale and not deed of mortgage for securing the suit loan amount. There is no equity in favour of plaintiff for seeking relief. Plaintiff had no transaction with defendant No.1. The defendant No.1 is in possession of suit property, hence no issue arises to take possession of suit property. Plaintiff did not challenge the said sale deed. In view of said sale deed the plaintiff has no title over suit property, moreover he had no possession over the suit property. As the relief sought for mere injunction Simplicitor without any right, ownership, title and possession, suit is not tenable. Thus, he prayed to reject the application.

7] Perused the counter pleadings of the parties and documents filed on record by them. Considered submissions.

8] Considering the matter before the Court, following points arise for my determination I have recorded my findings thereon along with my reasons as under :

S.N.	POINTS	FINDINGS
1.	Does the plaintiff prove that prima facie case is made out in his favour?	..Yes
2.	Does the plaintiff prove that balance of convenience lies in his favour?	..Yes
3.	Does the plaintiff prove that if the injunction is not granted, then irreparable loss will be caused to him which cannot be compensated in terms of money?	..Yes
4.	What order ?	Application is allowed.

:: REASONING ::

AS TO POINT NOS.1 :-

9] While considering an application for the injunction, it is well settled principle that, the Court must be looked into: (i) Prima Facie, (ii) Balance of Convenience and (iii) irreparable injury. Likewise, in *Colgate Palmolive (India) Ltd. Vs. Hindusthan Lever Ltd. AIR 1999 SC 3105*, the Hon'ble Supreme Court observed that the other considerations which ought to weigh with the Court hearing the application or petition for grant of injunctions are (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though

however having regard to injury that may be suffered by the defendants by reason therefore; (iii) the Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible; (v) the issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case; (vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.

10] Ld. Advocate Shri. Adude P.M. for the plaintiff submitted that, the plaintiff was owner and possessor of the suit property on the basis of sale deed. Due to some economic problems, he mortgaged suit property to defendant No.2 for the mortgage money of Rs.1,00,000/-. The plaintiff did not handover the possession to defendant No.2. However, the defendant No.2 has sold the suit property to defendant No.1 without the knowledge of plaintiff. The plaintiff is running the hotel business and he is ready to repay the handloan advanced. Thus, prayed to allow the application.

11] Ld. Advocate Shri. Deshmukh S.T. for the defendant No.1 submitted that, the plaintiff sold the suit property to defendant No.2 by executing sale deed bearing No.1464/2018 dated 03/07/2018. The plaintiff has handed over the possession of the suit property to defendant No.2. The defendant No.2 sold the suit property to defendant No.1 by sale deed bearing No.335/2021 dated 01/03/2021 and handed over the possession to defendant No.1. Thus, on the basis of sale deed defendant No.1 became owner and possessor of the suit property. The plaintiff did not mention plot number, information of N.A. The sale deed executed by the plaintiff is real one and not a deed of mortgage for securing the suit property. He placed his reliance on the case laws Karan Madaan and others Vs Nageshwar Pandey and Abdul Nabi Sahib Vs Bajan sahib and another. Lastly, he prayed to reject the application.

12] On careful perusal of record including the documents filed on record, it is *prima-facie* seen that the plaintiff sold the suit property to defendant No.2 by registered sale deed and defendant No.2 also sold the suit property to defendant No.1 by registered sale deed. The latest 8-A extract of suit property contains the name of defendant No.1.

13] It is the contention of the plaintiff that he of owner of the suit property. He executed sale deed for securing the handloan of Rs.1,00,000/-without delivering the possession of the suit property. He further contended that the sale

deed was nominal one. The defendant No.1 denied the same and contended that the sale deed executed by the plaintiff is real one. The plaintiff filed 7/12 extract of suit property which is in his name, however it is not a document of ownership. On perusal of said sale deed its prima-facie transpired that the contents of the said sale deed denote the nature of document as sale deed and not a mortgage or other document. Therefore, prima-facie it is seen that the defendant No.1 has ownership of suit property.

14] The plaintiff admitted that he has executed sale deed in favour of defendant No.2 for securing the handloan amount. It is notable that the plaintiff admitted that he executed sale deed for securing the hand loan of Rs.1,00,000/-, however it is transpired from the sale deed executed by the plaintiff in favour of defendant No.2 that the total consideration was Rs.1,53,000/-. No explanation in respect of remaining amount of Rs.53,000/- has been given by the plaintiff. Hence, prima-facie there is contrary in consideration amount of sale deed.

15] The plaintiff contended that he has been in possession in suit property since its purchase. He further contended that he has been doing business for 09 years in the name and style of Suhana Hotel. He contended that he never delivered the possession of the suit property to defendant No.2. The defendant No.2 sold suit property to defendant No.1 without delivering the possession. To support his

contention, he filed photograph of his hotel and affidavit of witnesses. The defendants did not file any document to show that the plaintiff delivered possession or their possession over suit property.

16] Mere pleading without supporting any document is not sufficient to disprove the contention of possession. Though the entries in revenue records did not confer any title, but they will prove the possession of the person, whose name entered in revenue records. The entries in revenue record and land revenue receipts are public documents, as such, unless the contrary is proved, they will be treated as genuine. There is nothing on record to *prima-facie* shows that the defendant No.1 after purchasing the suit property the plaintiff obstructed or interfered his possession over the suit property. It is not a defence of defendants that the plaintiff unlawfully in possession of suit property. Thus, *prima-facie* the possession of plaintiff over the suit property cannot be ruled out.

17] Though the defendant No.1 denied that the plaintiff does not do the hotel business over the suit property. However, the record *prima-facie* shows that the plaintiff is doing hotel business. In view of assessment of evidence, it is *prima-facie* concluded that the plaintiff is in possession of suit property. An injunction is an equitable relief in the form of Court order that compels a party to do or refrain from specific acts. The plaintiff proved his possession over

the suit property. Thus, the plaintiff made out a *prima-facie* case in his favour for grant of temporary injunction as prayed. Hence, I answer **point No.1 in affirmative.**

AS TO POINT NOS.2 :-

18] The plaintiff proved his possession over the suit property. The defendants failed to prove their possession over the suit property. Hence, balance of convenience tilts in favour of plaintiff. Hence, I answer **point No.2 in affirmative.**

AS TO POINT NOS.3 :-

19] The plaintiff is in possession of suit property. If the injunction is not granted, then surely the irreparable loss would be caused to the plaintiff, who is holding possession over the suit property, which cannot be compensated in terms of money. If the injunction is granted no irreparable loss will be caused to defendants. Hence, I answer **point No.3 in affirmative.**

AS TO POINT NOS.4 :-

20] Considering these all-discussion *prima-facie* it appears that the plaintiff has proved *prima-facie* case in his favour. The balance of convenience is also lies in the favour of the plaintiff. Thus, the plaintiff is entitled to get relief of temporary injunction as claimed. The application needs to be rejected. Hence, I answer points No.1 to 3 in the

affirmative, and in answer to **point No.4**, I proceed to pass the following order.

:: ORDER ::

- 1) Application (Exh.5) is allowed.
- 2) Defendants, their agents or anybody through them are hereby temporarily restrained from obstructing, interfering, alienating or creating third party interest over the suit property till final disposal of this suit.
- 3) Costs in cause.

Renapur.

(K. K. Waghmare)

Dt. 04/05/2023

Jt. Civil Judge Jr.D., Renapur.