



R.C.S.185/2019
**Meenabai Bhagwat Bombade Vs. Balasaheb Ram
 Adatrao and other 2**
 MHLA130011282019

Common Order Below Exh. 5 and 17

1. The application Exh.5 is filed by the plaintiff vide Order 39 Rule 1 and 2 and Section 151 of Code of Civil Procedure for temporary injunction against the defendants. The defendants have filed their written statement and counterclaim at Exh.15 and adopted the written statement as their say to Exh.5 vide pursis Exh.19. The application Exh.17 is filed by defendant No.1 to 3 vide Order 39 Rule 1 and 2 and Section 151 of Code of Civil Procedure for temporary injunction against the plaintiff. The plaintiff her filed W.S. to the counterclaim at Exh.26 and adopted the written statement as her say to Exh.17 vide pursis Exh.28. Heard learned advocates for both the sides. Perused the record.

2. For the determination of present application following points arise for my consideration, to which I have given the findings for the reasons mentioned thereunder :

Sr. No.	Points	Findings
1.	Who is having <i>prima-facie</i> case ?	The defendants.
2.	In whose favour balance of convenience is?	The defendants.
3.	Who will suffer irreparable loss?	The defendants.
4.	What Order ?	As per final order

REASONS

As point No.1 to 3.

3. It is submitted by the plaintiff that, she is owner and possessor of land Gat No.537 area 0H. 60 R. situated at village

Kharola, Tq.Renapur, Dist. Latur (in brief “the suit property”). The suit property is purchased from defendant No.1 vide sale-deed No.1191/2011 dated 08/06/2011. The plaintiff resides 7 to 8 K.M. away from the suit property. The defendants are obstructing her possession over suit property by destroying the crops, leaving animals in the crops, taking vehicles through the suit property. The plaintiff tried to convince the defendants through reputed persons of village Mr. Pravin Bastapure and Basweshwar Tatapure. However, defendants continued their acts. In the year 2019, the plaintiff was removing *soyabin Crop* from the suit property. The defendants came there and threatened the plaintiff with dire consequences to not to step in the suit property and assaulted her. The Plaintiff again tried to convince the defendants though their relatives and respected persons but they did not stop. On 01/12/2019, the plaintiff was cultivating suit property with help of a tractor. At that time, defendants again threatened the plaintiff. The plaintiff went to police station for lodging the complaint. But, her complaint was not taken. On 10/12/2019, the plaintiff again tried to convince the defendants. But the defendants hurled abused and assaulted the plaintiff. The plaintiff has filed suit the for perpetual injunction. By way of application Exh.5, the plaintiff is praying for temporary injunction against the defendants.

4. On the other hand, the defendants denied the case of plaintiff and submitted that, defendant No.1 has executed sale-deed No.1191/2011 dated 08-06-2011 without handing over possession of the suit property in favour of the plaintiff as security for loan amount Rs.4,00,000/-. The defendants have repaid the loan amount along-with interest on 01-06-2018 and requested the plaintiff for re-conveyance of the suit property. But

the plaintiff demanded additional interest on the loan and avoided the re-conveyance of the suit property. On 08-03-2019, the plaintiff demanded Rs.18,65,000/- for re-conveyance of the suit property. It is further submitted that, the plaintiff and her husband are big money lenders in Renapur Taluka. The plaintiff and her husband have practice of executing sale-deed as security of loans and grabbing the lands. The plaintiff and her husband are trying to grab the suit property. As the plaintiff demanded large sum despite repayment of the loan, the defendants filled complaint on 30-12-2019 to District Registrar, Co-operative societies as well as to the Collector, Latur. On the basis of complaint, Assistant Registrar, Co-Operative Societies, Renapur has taken search of plaintiff's house on 06-02-2020. In the said search, documents as to illegal money lending have been found out and seized. On 08-02-2020, Co-Operative Officer, Class-I Mr.Ramakant Ramling Agre has lodged F.I.R. against plaintiff and her husband under Maharashtra Money Lending (Regulation) Act. It is further submitted that, sale-deed of suit property was executed in favour of plaintiff as security for loan Rs.4,00,000/-. The defendants have re-paid loan Rs.4,00,000/- and Rs.55,000/- interest thereon. The defendants have never given possession of the suit property to the plaintiff as such the sale-deed was executed without consideration and for security purpose only. The husband of plaintiff is Ex-police personnel. The plaintiff and her husband have threatened the defendants and destroyed the crops in the suit property. The plaintiff is intending to create third party rights in the suit property. The defendants have filed counterclaim for cancellation of sale-deed No.1191/2011 dated 08-06-2011 and for perpetual injunction. By way of application Exh.17, the defendants are praying temporary injunction against the plaintiff.

5. The plaintiff has relied upon certified copy of mutation Entry No.39/2020, 7/12 extract of suit property, copy of sale-deed No.1191 of 2011 dated 08-06-2011.

6. On the other hand, the defendants relied upon copy of F.I.R. No.72 of 2020, copy of complaint given to District Registrar, Latur, copy of letter issued by District Sub-Registrar Latur to Assistant Registrar Renapur, copy of complaint to Superintendent of Police Latur and Assistant Registrar Renapur, copy of extract of Notebook, copy of complaint to Tahsildar Renapur. The defendants also relied upon affidavits of Mr. Sangmeshwar Suryakant Tatapure(Exh.21), Nagnath Gyanba Chavan(Exh.22), Santosh Ankush Adatrao (Exh.23) and Sanjay Narayan Rautrao (Exh.24).

7. It is argued on behalf of the plaintiff that, the execution of sale-deed in favour of the plaintiff is not in dispute. The sale-deed contains the recital about handing over the possession to the plaintiff on the day of execution of the sale-deed. The defendants cannot deny the contents of the sale-deed.

8. It is argued on behalf of the defendants that, the plaintiff has not pressed application Exh.5 since filing of suit until now. Therefore, the plaintiff is not in need of injunction order. The defendants have made several applications and complaints to different authorities. On the contrary, if the plaintiff's possession was being obstructed then she or her retired police husband should have filled complaint to the police station or any other authority. The plaintiff comes with the case that, she has tried to convince the defendants through respected persons from village. However, no affidavit is filled in support of this contention. On the other hand, defendants have produced affidavits of four respected persons from their village who are

deposing that, the defendants are in possession of the suit property and the sale-deed was executed as security for the loan. Ld. advocate for the defendant invited my attention to the copy of F.I.R. No.72/2020. The F.I.R. is lodged at Renapur Police Station U/s.39, 45,48(c) of Maharashtra Money Lending (Regulation) Act. The F.I.R. is against the plaintiff and her husband. During the search and seizure of the plaintiffs house around 43 documents regarding money lending have been found. Out of those documents around 23 documents are sale-deeds executed in favour of plaintiff and her husband.

9. In order to show the possession over the suit property, the plaintiff has simply relied upon the statement made in the sale-deed dated 08-06-2011. Besides that, there is no material on record to show her possession over the suit property. On the other hand, the defendants produced affidavits (Exh.21 to 24) and receipt of M.S.E.B bill to show their possession over their suit property. The execution of the sale-deed is not in dispute. As on today name of the plaintiff reflects in revenue record of the suit property. However, the defendants came with a specific case that, the sale-deed is executed for the purpose of security which is without consideration and without handing over possession of the suit property. The documents produced by the defendants *prima-facie* establish that, the defendants' case has substance and it needs trial on the issues raised by them. The fact cannot be ignored that, application Exh.5 is filed by the plaintiff along-with the suit, however, the plaintiff has not pressed the application until now. There is not a single complaint or application given by the plaintiff to police station or any other authority in respect of alleged obstruction by the defendants. Hence the case of plaintiff about possession over suit property

does not show *prima-facie* probability. Therefore, I do not find that, the plaintiff has *prima-facie* case.

10. On the other hand with the documents produced in support, the defendants have made out a *prima-facie* case by showing their possession over the suit property. Therefore, I find that, *prima-facie* case is in favour of the defendants. Since the defendants are in possession of the suit property, the balance of convenience is in their favour and they will suffer irreparable loss, if injunction is not granted in their favour. Hence point no.1 to 3 are answered accordingly.

As to point No.4

11. In view of above findings, the defendants are entitled for temporary injunction as prayed. The application Exh.5 deserves to be rejected. Hence following order :-

ORDER

- 1] The application (Exh.5) is rejected.
- 2] The application (Exh.17) is allowed.
- 3] The plaintiff or any person claiming on her behalf is hereby temporarily restrained from alienating the suit property or obstructing the possession of defendant No. 1 to 3 over the suit property in any manner, till decision of the suit or till further orders.
- 4] Costs in cause.

Place : Renapur.
Date : 20/10/2022

(Y.A.Jadhav)
Jt.C.J.J.D. Renapur

(7)

C E R T I F I C A T E

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

Name of Stenographer : S.M.Tanawade

Court Name : Y.A.Jadhav,

Jt.C.J.J.D., Renapur.

Order Date : **20/10/2022**

Order signed by presiding officer on : **20/10/2022**

Order uploaded on: **20/10/2022**