

ORDER BELOW EXH. 36 IN R.C.S. NO. 721/2013
(Gyanu vs. Venkat and other)

Plaintiff has filed application for temporary injunction under Order 39 Rule 1 and 2 r.w. section 151 of Civil Procedure Code.

2. The brief facts of the application are as under.

As per plaintiff, he is the owner and possessor of G.P.house No.360/1 adm. 39 X 33 which is part and parcel of land survey No.146/B village Sarola, Tq. Ausa, Dist. Latur having four boundaries as described in plaint para No.2. (Hereinafter referred as “the suit property” in short). The plaintiff has purchased the suit property by way of registered sale deed bearing day book No.1223/1983 on 14/07/1983. Since he is in possession of the suit property. He constructed the house and reside therein. Further more, he has paid property tax time to time. The defendants have no concern with the suit property, however, they trying to dispossess the plaintiff. The defendants threatened plaintiff and causing obstruction in his peaceful possession. Hence, this application.

3. The defendants filed their say vide Exh.44. The partly contents of the plaint are admitted by the defendants. The defendants admitted the ownership of the plaintiff over the suit property. However, as per them the plaintiff has sold out the portion adm. 30 X 16 out of the suit property to the defendants. The plaintiff on 12/07/1999 sold out the said portion to defendants. Since the defendants are in possession of the said portion. Hence, the defendants prayed to reject the application.

4. Heard the respective Advocates for plaintiff and defendants.
5. Considering the pleadings of the parties, submissions and on perusal of applications, documents annexed with, following points arise for my determination and I record my findings thereon with the reasons stated hereinafter:-

<u>Points</u>	<u>Findings</u>
1} Who has prove the prima-facie case ?	Plaintiff.
2} Who will suffer irreparable loss in the event of refusal to grant temporary injunction ?	Plaintiff.
3} In whose favour balance of convenience lies ?	In favour of the plaintiff.
4} What order ?	As per final order.

R E A S O N S

6. In support of his application vide Exh.36, the documents are filed on record. The same will be considered at the relevant time hereinafter.

As to point Nos. 1 to 3 :

7. The all points are interlinked with each other hence discussing in together to avoid the repetition.
8. As per plaintiff, he is exclusive owner of the suit property. He

never agreed to sale out the portion of the suit property to the defendants. The plaintiff argued that since 1983 being a lawful owner he is in possession of the suit property. The defendants have created false document and trying to dispossess the plaintiff. The plaintiff has no alternative residence. Hence, balance of convenience is lies in his favour. On the other hand, the learned advocate for defendants asserted that on 12/07/1999 the plaintiff has sold some portion out of the suit property to fulfill his family need. The plaintiff has executed the sale deed on stamp paper accordingly. There is no prima facie case in favour of plaintiff.

9. The learned advocate for defendant further argued that the defendants are in possession of the property to the extent of 33 X 16. The photo copy of alleged stamp paper is on record. As per defendants the plaintiff has tendered the possession accordingly as per sale deed dated 12/07/1999. However, the plaintiff himself denied the alleged transaction. There is no such document executed by plaintiff ever in favour of any person. The plaintiff is lawful owner of the suit property. The documents including 8-A extract of suit property clearly showing the ownership as well as possession of the suit property in the name of plaintiff. On the contrary, the defendants have also filed the copy of namuna no. 8-A of the year 2016-17. As per defendants, the suit property is divided in three portion. The name of defendants is appeared in the column of possessor. However, there is no continue entries in the name of defendants in revenue record. The copy of registered sale deed bearing day book No.1223/1983 dated 14/07/1983 is on record. On perusal of the same it becomes clear that the plaintiff is lawful owner of the suit property. As the ownership follows the possession. The plaintiff himself denying the alleged

transaction with defendants. Further more, the plaintiff has produced tax paid receipts of the suit property. The entry of plaintiff's name in the revenue record is seen continuously. Considering the documents on record and contents of the plaint it is seen that the plaintiff has made out prima facie case.

10. As the ownership of plaintiff is not disputed. The defendants alleged that the plaintiff has sold out some of the portion out of the suit property to them. They have filed the affidavit of one Mansur Shaikh who is the attesting witness of alleged sale deed. However, the name of the plaintiff is appeared in revenue record continuously. However, at this juncture there is no sufficient material on record to believe the contentions of defendants. As it is part and parcel of the evidence to prove the alleged sale transaction. However, at this juncture it becomes clear that the plaintiff is in possession of the suit property being the lawful owner.

11. Thus, the plaintiff is owner in possession of the suit property. His possession is required to be protected. The defendants denied the possession of the plaintiff. It shows that the defendants causing obstruction. He is the plaintiff who will suffer irreparable loss if the application rejected. The plaintiff is old aged person. His rights are required to be protected. Even the balance of convenience is lies in favour of plaintiff.

12. In such circumstances when the question arise to whom irreparable loss and hardship will be caused the answer I found definitely in favour of the plaintiff. Hence in view of above discussion I convenience that plaintiff has made out prima-facie case, balance of

convenience also lies in his favour, and great irreparable loss will certainly cause to him, if the application denied. Therefore, I answer the point nos. 1 to 3 in favour of plaintiff, and in answer to point no. 4, I pass the following order.

ORDER

1. The application vide Exh.36 is hereby allowed.
2. The defendants are hereby restrained to cause interference through any person in peaceful possession of the plaintiff till the decision of the suit.
4. Cost in cause.

Date : 03/09/2016
Place : Ausa.

(J. P. Sarpate)
2nd Jt. Civil Judge, J.D. Ausa.