

**ORDER BELOW EXH. 123**  
**CNR No.MHLA150002142010**

The present application is moved by the defendant no.1 for dismissal of suit. According to her, plaintiffs have filed suit for perpetual injunction in respect of land Gat No.159/1/2 Adm. 3 H. 28 R. situated at Mashnerwadi, Tq. Chakur, Dist. Latur. Plaintiff No.2 with the consent of plaintiff No.1 sold 1 H. 09 R. land out of Survey No.159/1/2 situated at Mashnerwadi, to one Sd. Sharif Abbas vide sale deed No.2066/2016 dated 27/09/2010. Plaintiff No.1 with consent of plaintiff No.2 executed registered agreement of sale bearing No.2065/2010 dated 27/09/2010 in respect of land Sy.No.159/1/2 to the extent of 1 H. 9 R. situated at Mashnerwadi in favour of Sd. Sharif Abbas. In both deed subject matter of present suit i.e. 3 H. 28 R. land out of Sy.No.159/1/2 situated at Mashnerwadi are involved.

2. Plaintiffs have secured temporary injunction order and suppressed the above transaction before the court and intentionally not produced documents and conceal the vital documents from the court. As per the recital of both the deeds the plaintiffs have stated that they have transferred the possession of the land to purchaser namely Sd. Sharif Abbas. Both the documents are executed on 27/09/2010. As per the recital of the deeds the plaintiffs are not in possession of the suit property and they have transferred the suit property to the purchaser Sd. Shariff Abbas. Hence, plaintiffs without any possession trying the suit and abuse the process of law. During the pendency of the suit, without the permission of court they executed documents. The suit is for the relief of perpetual injunction not causing obstruction in their peaceful possession. As the suit is not tenable in present form she prayed for

dismissal of suit.

3. On the other hand, plaintiff no.1 to 5 opposed the application vide reply below Exh.125 contending that, defendant no.1 prolonging the matter only to harass them. They admitted suit property and fact of sale deed no.2066/2010 and 2065/2010, but according to them plaintiff no.1 executed agreement of sale bearing No.2065/2010 on dated 27/09/2010 in favour of Sharif Abbas only for the purpose of security of loan transaction. It is not actual agreement of sale between plaintiff no.1 and Sharif Abbas. Moreover, the possession is also not handed over to Sharif Abbas as per content of agreement.

4. Plaintiff no.2 also executed sale deed No.2066/2010 on dated 27/09/2010 only for the purpose of security of loan transaction. Moreover, the possession is also not handed over to Sharif Abbas till today as per content of sale deed. Thus sale deed is not actual sale deed. Moreover, till today mutation entry is not mutated by Sharif Abbas on 7/12 extract as per agreement and sale. Thus plaintiff no.1 to 5 are actual owner and possessor of suit land and defendant no.1 has no right to file such application. Moreover, the evidence of plaintiff is open and plaintiffs examined witnesses. Therefore, since long back the matter is pending for part heard evidence of defendants. As the possession is with plaintiffs they prayed for rejection of this application.

5. Heard both the sides, perused the record and documents. The execution of document in respect of land Gat no.159/1/2 adm. 1 H. 9 R. out of 3 H. 28 R. vide sale deed No.2066/2010 and land Gat No. 159/1/2 adm. 1 H. 9 R. out of 3 H. 28 R. vide sale deed No.2065/2010 and both the sale deeds executed on 27/09/2010, is not disputed by

both the parties. Moreover, defendant No.1 only contended that possession is handed over by plaintiffs to one Sharif Abbas. Whereas plaintiffs contended that no possession is handed over till today.

6. Defendant no.1 admitted that she did not aware regarding both the documents, so she moved application below Exh.163 in RCS No.82/2009 for amendment. Moreover, the name of defendant no.8 was added to that suit upon apprehension that defendants were going to make transaction regarding suit property on dated 21/01/2010. Moreover, name as per sale deed are also not recorded on 7/12 extract. This fact is also admitted by defendant no.1.

7. Plaintiffs also submitted that, the said transaction was nominal one and only for security of loan without handing over the possession. Thus name on 7/12 extract are not recorded as per sale deed. Hence, the submission of plaintiffs seems proper and appropriate. Moreover, considering submission such transaction is only for security of loan without handing over possession and on condition that no 7/12 extract is recorded in the name of purchaser, the possession is apparently shows with plaintiffs. Moreover, suit is filed in the year 2010 and considerable evidence is appear on record. Hence, no prejudice caused to defendants. Hence, I pass following order.

**ORDER**

Application is rejected with cost of Rs.500/- to be paid to plaintiffs.

Date- 22-01-2019

**(Yogesh D. Koinkar)**  
C.J.J.D., Chakur.