

R.C.S.No.129/2014
Shrihari Vs. Rohidas

ORDER BELOW EX. 5
(Passed on 10.02.2015)

1. By this application [Exhibits 5], the plaintiff is claiming temporary injunction to restrain the defendant from alienating the suit property or creating any encumbrances or third party interest therein.

2. Facts giving rise to this application are that plaintiff and defendant were employees of MSEDCL. The defendant has purchased the suit plot by registered sale deed dated 18/11/2010 from one Shirish Manatkar. The defendant was in need of money for domestic expenses. He decided to sell the suit plot. The plaintiff expressed his willingness to buy the said plot. Accordingly, the parties entered into an agreement to sell the suit plot on 11/10/2012. The consideration prize of the suit plot was agreed at Rs.3,00,000/-. The plaintiff has paid earnest amount of Rs.1,00,000/- to the defendant. In turn the defendant has executed an agreement to sell which was notarized. Defendant has also deposited title deeds of the

suit property with the plaintiff. The defendant has agreed to execute the sale deed of suit property on or before 30/01/2013. But the defendant avoided to perform his part of contract. On 17/06/2013 the plaintiff has again paid an amount of Rs. 30,000/- towards part of balance consideration.

3. As the defendant was avoiding to execute the sale deed, the plaintiff has issued legal notice dated 03/02/2014 calling upon the defendant to finally execute the sale deed on 13/02/2014. But defendant remained absent at the Sub Registrar Office and committed breach of agreement. Plaintiff was/is ready to perform his part of contract. By taking undue advantage of entry of his names in the revenue record, defendant is in haste to alienate the suit property. Hence, this application for temporary injunction.

4. Defendant although appeared has failed to file his say and W.S. Therefore, the suit and consequently this

application is proceeded without his W.S. and say vide order below Ex. 1 dated 04.12.2014.

5. Heard Shri D. R. Pawar Ld. Advocate for the plaintiff. Defendant and his counsel are absent.

6. In view of the pleading of plaintiff, material produced on record and arguments advanced at bar, following points arise for my determination. I have recorded my findings thereon for the reasons given herein below.

<u>Points</u>		<u>Findings</u>
[i]	Whether the plaintiff has made-out prima-facie case?	Yes.
[ii]	Whether balance of convenience tilts in favour of the plaintiff?	Yes.
[iii]	Whether the plaintiff will suffer irreparable loss, if injunction is refused?	Yes.
[iv]	What Order?	Application is allowed.

REASONS

7. AS TO POINTS 1: The application is supported by an affidavit. The contention of the plaintiff remained unchallenged. Moreover, the agreement to sell dated 11/10/2012 is evident to show that the suit property was agreed to be sold to plaintiff. If it is so, the defendant can not alienate the suit property with a view to defeat the rights of plaintiff. As such the plaintiff has successfully raised triable issues and I find *prima facie* case in favour of the plaintiff. Hence, point no. 1 is answered in the affirmative.

8. AS TO POINT No 2 AND 3: The recitals in affidavit of plaintiff are evident to *prima-facie* show that defendant is in haste to alienate the suit property. Normally during the pendency of a substantive suit where rights to immovable properties are in dispute, status quo cannot be allowed to be altered which includes creation of third party interests. If temporary injunction is not granted, it may result into multiplicity of proceedings inasmuch as the transferee *pendente lite* may apply for impleadment, which will result in

delay in proceedings of the suit. Plaintiff has made-out *prima-facie* case in their favour, the implication of which is that at least at this stage, it will be apt to say that no loss would be caused to the defendant if he is restrained in comparison with the loss apprehended to be caused to the plaintiff if no injunction is granted. Thus, the balance of conveniences tilts in favour of granting interim relief. Hence, point No. 2 and 3 are answered in the affirmative.

9. **AS TO POINT NO.4:** In view of my findings recorded to point no. 1 to 3, the application Ex.5 deserves to be allowed. The costs of this application may leave to be considered at the time of adjudication of the costs of entire litigation. In the conclusion, I pass the following order.

ORDER

- A. The application [Exhibit-5] is allowed.
- B. Issue temporary injunction restraining defendant from alienating or creating third party interest or

encumbrances on the suit property in any mode of transfer of property till decision of the suit.

C. Costs in main cause.

Sd/-

Date: 10/02/2015.

(V.N.Thakur)
C.J.J.D. Hadgaon.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word to word, as per the original Order.

Name of the Stenographer : Nagappa Gurapadappa Majage

Court Name : J.M.F.C. & C.J.J.D., Court,
Hadgaon.

Date : 10.02.2015

Order signed by the Presiding Officer on : 10.02.2015

Order uploaded on : 10.02.2015