

Order below Exh.5 in
RCS No.154/2015,
Swanyawarsingh
Vs.
Sau.Vidyawati & Anr.

1- This is an application filed by plaintiff under Order 39, Rule 1 and 2 of the Code of Civil Procedure, for grant of temporary injunction.

2- It is submitted by plaintiff that; he and defendants are of village Jalkot. Defendant No.1 is wife of defendant No.2. In the month of April 2000, plaintiff was in need of Rs.1,00,000/-, therefore, he approached to defendants and requested to give him Rs.1,00,000/-. Plaintiff executed mortgage in the name of defendant No.1 by way of deposit title in security of Rs.1,00,000/-. It is further submitted by plaintiff that realization period of said mortgage was fixed of two years from the date of execution of mortgage deed bearing No.1028 dated 17/04/2000, executed in favour of the defendant No.1. The plaintiff approached to defendants in the year 2006 and repaid entire amount of defendant No.1. Plaintiff claimed defendant No.1 to reconvey redemption of mortgage deed but defendants flatly refused to redemption of mortgage deed. Therefore, plaintiff lastly prayed to allow the application and resist defendants from alienating the suit land till final disposal of the suit.

3- Defendants appeared in the suit and filed written statement at Exh.13. Defendants denied major allegations made by

plaintiff. It is submitted by defendants that sale deed executed by plaintiff in favour of defendant No.1 is outright sale deed. It is further submitted by defendants that there is no contents of reconveyance of sale deed or redemption in alleged sale deed, therefore, question will not arise to reconvey the sale deed to plaintiff. Hence, defendants lastly prayed to reject the application with costs.

4- Heard learned Counsels for both the parties. Perused the record. Following points arise for my determination and I record my findings thereon, for the reasons to follow.

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff is having prima facie case?	..No.
2	Whether balance of convenience lies in favour of the plaintiff?	..No.
3	Whether the plaintiff will suffer irreparable loss, if injunction is refused?	..No.
4	What order ?	The application is rejected.

R E A S O N S

AS TO POINTS NO. 1 TO 4:-

5- These points are interlinked with each others, therefore, taken up for discussion to avoid repetition. In order to

prove his claim, the plaintiff has filed 7/12 extract of Gut No.439 of village Dapka (Raja), Tq. Mukhed, certified copy of alleged mortgage/sale deed bearing day book No.1028 dated 17/04/2000. Plaintiff also filed affidavit in support of his version. Learned Advocate for the plaintiff argued that plaintiff has executed mortgage deed in favour of the defendant No.1 of consideration of Rs.1,00,000/-. Plaintiff has paid entire amount to defendant No.1, though the defendant has not executed reconveyance/redemption deed in favour of plaintiff.

6- On the other hand, learned Advocate for defendants submitted that the alleged sale deed executed by plaintiff in favour of defendant No.1 is outright sale deed. The contents of alleged sale deed also indicates that, that is sale deed.

7- Perused record. Name of defendant No.1 appears in 7/12 extract of Gut No.439. Plaintiff also filed certified copy of sale deed bearing day book No.1028 dated 17/04/2000. On perusal of contents of said sale deed, there is no single word to reconvey sale deed/redemption. The contents of sale deed shows that plaintiff executed sale deed in favour of defendant No.1 for consideration of Rs.1,00,000/-, for his agricultural, family expenditure and loan repayment. The plaintiff also admitted in sale deed that he received Rs.1,00,000/- and handed over possession to defendant No.1, before execution of sale deed.

8- Considering above factual aspects, it would be difficult to say that the plaintiff is having prima facie case to grant

injunction. Therefore, question of balance of convenience does not lie in his favour and against the defendants. Therefore, it cannot be said that in absence of both the ingredients irreparable loss would cause to the plaintiff, if the injunction is refused. Hence, considering the facts and circumstances of the case in hand, I answer point No.1 to 3 in negative and in answer to point No.4, I proceed to pass following order.

ORDER

- 1- Application Exh.05, rejected
- 2- Costs in main cause.

Dated:01/12/2016

(Sharad B. Kaldate)
Civil Judge, J.D.,
Mukhed.

CERTIFICATE

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

Name of the Stenographer: N.B.Kulkarni.

Court Name :Court of C.J.J.D. & J.M.F.C. Mukhed.

Date:01/12/2016.

Judgment signed by the Presiding Officer On :01/12/2016.

Judgment uploaded on :03/12/2016.