

Reg. Civil Suit No.8/2021
Sushama -vs- Jaideo

COMMON ORDER BELOW EXH.05 AND 41

(Dated 09/11/2023)

Plaintiff No.1 has filed the application below Exh.5 under Order 39 Rule 1 and 2 of the Civil Procedure Code,1908 (in short 'the Code') to restrain defendants from obstructing her peaceful possession over the suit property. Further, plaintiff No.1 by way of application at Exh.41 filed under Order 39 Rule 1 and 2 of the code prayed for restraining defendant No.1 from creating third party interest over the suit property.

2] Plaintiff No.1 submitted that, she is absolute owner and in possession of the suit property. Plaintiff Nos.2 to 4 were the original owners of the suit property from whom plaintiff No.1 has purchased the same. Defendant No.1 had filed Special Civil Suit No.211/2005 against defendant Nos.2 to 8 for specific performance of contract on the basis on agreement to sale dated 03/08/2004 in respect of the suit property. The said suit has partly decreed and it was ordered to pay earnest money of Rs.5,000/- to defendant No.1 with interest @ 18% p.a. and prayer of specific performance has rejected. In the said suit the suit summons were duly served to all defendants, but none appeared, therefore, suit proceeded ex-parte. Against the said judgment and decree, defendant No.1 preferred an appeal bearing R.C.A. No.72/2011, which came to be allowed and relief of specific performance granted in favour of defendant No.1. On the basis of judgment and decree passed in R.C.A. No.72/2011 defendant No.1 filed R.D. No.180/2017, wherein defendant No.2 to 8

have appeared and filed their objection and contended that, they have sold the suit property and cancelled sale agreement dated 03/08/2004, the said objection came to be rejected. The Executing Court appointed the Court Commissioner and executed the sale-deed of the suit property in favour of defendant No.1 on 27/11/2020 bearing No.4324/2020. The Executing Court has not issued possession warrant in respect of the suit property and it is still pending. Plaintiff No.1 is in physical possession of the suit property. Further, on the basis of sale-deed the name of defendant No.1 mutated to the suit property and at that time notices were issued, which plaintiff No.1 received notice on 04/01/2021. Plaintiff No.1 on 04/01/2021 firstly came to know about various Court cases regarding the suit property. Defendant Nos.1 to 8 never informed plaintiff No.1 about the cases filed in respect of the suit property and suppressed material facts and never joined plaintiff No.1 as a necessary party. The area of field No.250 was H.2.02R., which was divided into two parts i.e. field No.250/1, area H.1.01R. and field No.250/2, area H.1.01R. The Namdeo Dongre and his family have executed registered sale-deed bearing No.1066/2005 of field No.250/2 in favor of Keshav Umjai Parlewar on 10/03/2005 and accordingly the name of Keshav Umjai Parlewar mutated to the suit property. The possession of the suit property was handed over to Keshav Umjai Parlewar on the date of execution of sale-deed. Further, Keshav Umjai Parlewar executed sale-deed bearing No.4112/2008 in favour of Shilpa Ajay Agrawal on 18/07/2008 and the name of Shilpa Ajay Agrawal mutated to the suit property and she received the physical possession of the suit property accordingly. The Shilpa Ajay Agrawal executed sale-deed bearing No.4067/2010 in respect of the suit property in favour of plaintiff No.1 on 30/09/2010 and on that basis the name of plaintiff No.1 mutated to

the suit property vide mutation entry No.555 dated 30/12/2010 and she received physical possession from Shilpa Ajay Agrawal and her name is still mutated to the suit property. The name of plaintiff No.1 has mutated to the suit property when defendant No.1 got executed sale-deed from the Court Commissioner bearing No.4324/2020 dated 27/11/2020. The decree holder and judgment debtors in the said Execution proceeding are in collusion with each other and suppressed facts from the Court that, plaintiff No.1 is real owner and in possession of the suit property. Plaintiff No.1 is therefore bonafide purchaser of the suit property and her sale-deed has not been challenged. The Special Civil Suit No.211/2005 and R.C.A. No.72/2011 were decided ex-parte, wherein the decree holder and judgment debtor in execution proceeding were in collusion with each other and therefore the decree obtained in RCA No.72/2011 is nullity. Hence, defendant No.1 cannot take physical possession of the suit field from plaintiff No.1, as she is not a party in R.D. No.180/2017. There are serious question to be tried by this court on basis of documents and pleading of plaintiffs. Hence, the application.

3] So far as application at Exh.41 is concerned, plaintiff No.1 submitted that, defendant No.1 has illegally mutated his name in 7/12 extract and he is trying to sale the suit property to third person. The Patwari of the Tahasil Office deleted the name of plaintiff No.1 and name of defendant No.1 is mutated. Defendant No.1 on the basis of his name, trying to alienate the suit property to third person and if defendant No.1 creates third party interest, it will create multiplicity of litigation. Hence, it is necessary to restrain defendant No.1 from creating any third party interest in the suit property. The Tahsildar, Kamptee in revenue case mentioned that, defendant No.1 shall require to take prior permission of

the Court if he wants to create third party interest in the suit property. Plaintiff No.1 has filed an application to the Sub-registrar Office, Kamptee on 13/08/2021 and intimated the order of Tahsildar, however, the Registrar Office demanded injunction order from the Civil Court. Hence, plaintiff No.1 filed this application. Hence, the application.

4] Defendant No.1 filed reply for application at Exh.5 at Exh.27 and adopted the said reply as a reply for Exh.41 by filing pursis at Exh.51. Wherein he denied all the contents of the applications and submitted that, R.C.A. No.72/2011 was allowed on 24/04/2017 in favour of defendant No.1 and thereby it was directed to the judgment debtor to execute sale-deed of the suit property and to put the decree holder in possession. Accordingly, the defendant No.1 initiated execution proceeding bearing R.D. No.180/2017, wherein the Court Commissioner was appointed for execution of sale-deed and on 27/11/2020 the Court Commissioner executed sale-deed bearing No.4324 of 2022 in favour of defendant No.1 and handed over the possession of the suit property to defendant No.1. Finally, prayed for rejection of the application.

5] Perused the applications, say and record. Heard. From which, following points arise for my determination. They are answered with my findings for the reasons thereunder:

	<u>Points</u>		<u>Findings</u>
1.	Whether plaintiff No.1 made out prima-facie case...?	:	Yes
2.	Whether plaintiff No.1 proves that, balance of convenience lies in her favour...?	:	Yes.

	<u>Points</u>		<u>Findings</u>
3.	Whether plaintiff No.1 will suffer irreparable loss if temporary injunction is not granted...?	:	Yes
4.	What order...?	:	The applications are allowed

REASONS

6.

Point Nos. 1 to 4 :-

6] It is well settled law that, temporary injunction can be granted if the case is covered by three important principles i.e. i) prima-facie case, ii) balance of convenience and iii) on refusal of injunction, the applicant would suffer irreparable loss. According to the plaintiff

7] The person who seeks the relief of interim injunction, he must satisfy the Court that, there is a serious question to be tried in the suit. According to plaintiff No.1, she is in possession of the suit property since the date of her sale-deed (Exh.32/8). As per sale-deed (Exh.32/8) coupled with 7/12 extract (Exh.4/1) it seems that, plaintiff No.1 was owner and is in possession of the suit property. It is admitted fact that, the Court Commissioner was appointed in R.D. No.180/2017, who has executed sale-deed (Exh.32/9) in favour of defendant No.1 and on the basis of said sale-deed the name of defendant No.1 has been mutated in the suit property (Exh.40/2).

8] Now coming to aspect of who is in physical possession of the suit property. As noted above, plaintiff No.1 contended that, she is in

physical possession of the suit property and by way of the present application prayed interim injunction against defendants from not to obstruct her possession over the suit property. On this background, in plaint paragraph No.26 it has averred that, the cause of action for filing this suit is arriving day to day and everyday and defendant No.1 is threatening to evict plaintiff No.1 from the suit field. So far as element of physical possession is concerned the original owner of the suit property had executed sale-deed of the suit property (Exh.32/6) in favour of one Keshav Umaji Parlewar on 10/03/2005 and handed over possession of the suit property to him. Further, the said Keshav Umaji Parlewar executed sale-deed (Exh.32/7) of the suit property in favour of Shilpa Ajay Agrawal on 04/12/2008 and as per the said sale-deed Keshav Umaji Parlewar has handed over the possession of the suit property to Shila Ajay Agrawal. Further, the said Shilpa Ajay Agrawal executed sale-deed (Exh.32/8) of the suit property in favour of plaintiff No.1 on 30/09/2010 and by way of said sale-deed plaintiff No.1 received the possession of the suit property from Shilpa Ajay Agrawal and on the basis of said sale-deed the name of plaintiff No.1 came to be mutated to the suit property (Exh.4/1). Thus, as per sale deed (Exh.32/8) coupled with 7/12 extract (Exh.4/1) plaintiff No.1 prima-facie appears to be in possession of the suit property.

Here it is necessary to note that, the sale-deed executed by the Court Commissioner as per order passed in R.D. No.211/2005 on 27/11/2020 and on the basis of said sale-deed the name of defendant No.1 has been mutated in 7/12 extract of the suit property (Exh.40/2). As per recitals of sale-deed (Exh.32/9) it seems that, possession of the suit property handed over by the Court Commissioner on the date of sale deed itself. However, it is necessary to scan whether, the Court

Commissioner had handed over the physical possession of the suit property. As per Order passed in R.C.A. No.72/2011, the plaintiff i.e. defendant No.1 entitled for possession of the suit property after execution of sale-deed. Thus, it appears that, the Court Commissioner did not handover physical possession of the suit property to defendant No.1. Further, I perused the applications filed by defendant No.1 in R.D. No.180/2017 in respect of grant of police aid and issuance of possession warrant (Exh.40/5 and 6), wherein defendant No.1, who is decree holder, contended that, holder of the suit field Smt. Sushma Raghunath Sanghi obstructed for possession by saying that, she is owner of the suit property. Thus, these things prima-facie demonstrates that, plaintiff No.1 is in possession of the suit property. Thus, it is necessary to protect the possession of plaintiff No.1 and also it is necessary to restrain defendant No.1 from dispossessing plaintiff No.1 from the suit property without following due procedure established by law.

Considering the upshot of above discussion so far as application (Exh.5) is concerned, plaintiff No.1 prima-facie establish that, she is in physical possession of the suit property.

9] So far as application below Exh.41 is concerned, plaintiff No.1 contended that, the name of defendant No.1 illegally mutated in 7/12 extract of the suit property and he is now trying to alienate the suit property to third person and if defendant No.1 creates third party interest, it will create multiplicity of proceeding. Therefore, it is necessary to restrain defendant No.1 from creating third party interest over the suit property. As discussed above, plaintiff No.1 prima-facie proves her possession over the suit property. Further, plaintiff No.1 has filed the present suit for declaration that, the Judgment and Decree passed in

Spl.C.S. 211/2005 and R.C.A. No.72/2011 are null and void and not binding upon her. Thus, the apprehension of the plaintiff No.1 cannot be ruled out, as if defendant No.1 creates any third party interest over the suit property during pendency of this suit, it will create multiplicity of proceeding. Hence, it is necessary to restrain defendant No.1 from creating third party interest over the suit property till decision of the suit.

10] The existence of prima-facie case is not by itself sufficient, the applicant must show that, balance of convenience lies in his favour. It has prima-facie come on record that, the proceeding of R.D. No. 180 of 2017 is pending and possession warrant has still not been issued. Thus, if defendant No.1 dispossess plaintiff from the suit property she would cause hardship than defendant No.1. Thus, plaintiff No.1 proves that, the balance of convenience lies in her favour.

11] Further, plaintiff No.1 must establish that, irreparable injury will accrue to her if the interim injunction not granted. Plaintiff No.1 prima-facie establish that, she is in physical possession of the suit property and defendant No.1 if dispossessed her from the suit property without following due procedure establish by law then in such circumstances the application if rejected plaintiff No.1 will irreparable injury.

12] In the light of aforesaid discussion, I am of the view that, plaintiff No.1 made out prima-facie case. Therefore, the balance of convenience lies in her favour and certainly she will suffer irreparable loss if the applications are rejected. Hence, I answer point Nos. 1 to 3 in affirmative and in answer to point No 4, I pass following order:

ORDER

- 1] The applications (Exh.5 and 41) are allowed.
- 2] Defendant No.1, his agent on any other person acting on his behalf are temporarily restrained from dispossessing plaintiff No.1 from the suit property without following due procedure establish by law till decision of the suit.
- 3] Defendant No.1 is temporarily restrained from creating third party interest over the suit property till decision of the suit.
- 4] No order as to costs.

Sd/-

**Dated : 09/11/2023.
Place: Kamptee.**

**(Amit A. Kulkarni)
Civil Judge, Junior Division
Kamptee.**