

ORDER PASSED BELOW EXH.NO.5 & 8

(Passed on 1st June, 2018)

01] This is a suit for declaration, permanent and mandatory injunction in respect of house bearing No.NL/1, situated at Sufi Nagar, Bhoi Line, Kamptee, more particularly described in Para-1 of the plaint, is the subject matter of the suit. The said property is hereinafter referred to as “tenanted shop”. The plaintiff has prayed for temporary injunction against the defendant to restrain him from interfering her peaceful possession over the said house. The plaintiff has also prayed for mandatory temporary injunction for the removal of construction of wall. The plaintiff has also prayed for direction against the defendant to open lock of the tenanted shop.

02] Perused application and say. Heard both sides.

03] In short, it is the case of the plaintiff that she is the tenant of the defendant. She has been residing in the tenanted premises since long and the defendant is trying to vacate her from the tenanted premises. The plaintiff had filed one civil suit against the defendant bearing RCS No.139/2001 which was decreed in her favour. It is further alleged that the plaintiff closed the tenanted premises and went back to her home. When she came back to the tenanted shop on 13/5/2018, at 9.30 A.M., she saw that the defendant had constructed wall in front of the door of the tenanted premises. The plaintiff tried to open the shop but the defendant threatened her to not to open the shop otherwise he will kill her. Thus, the plaintiff has prayed for temporary injunction restraining defendant from causing

obstruction to her peaceful possession over the tenanted premises. She has also prayed for mandatory injunction for removal of wall and direction against the defendant to open the lock of the tenanted shop.

04] It is not disputed by the defendant that the plaintiff is the tenant of the tenanted shop. Whatever allegations are made by the plaintiff are denied by the defendant. It is submitted that Municipal Council, Kamptee, has issued notice for demolition of the tenanted premises as it is in dilapidated condition. He further submitted that wife of the defendant requested to the plaintiff to vacate the suit house as the notice for demolition was issued by the Municipal Council Kamptee but she refused. It is further submitted that rainy season is forthcoming and as the tenanted shop is in dilapidated condition, the entire house will collapse and it may cause injury to the life and property. The plaintiff is not intending to vacate the suit house, therefore, she filed false suit. It is also submitted that the Judgment and Decree is passed in favour of the plaintiff in RCS No.139/2001 but the plaintiff has not taken other remedy in pursuance of the said Judgment, therefore, the suit is barred by res-judicata. Thus, on the basis of this submission defendant has prayed for rejection of this application.

05] Considering submission made on behalf of the Counsel for plaintiff and defendant, following points arise for determination and I have recorded my findings against each of them for the reasons given below :-

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Sr.No.	Points	Findings
1.	Whether the plaintiff prove that she has prima-facie case in her favour?	... No.
2.	Whether balance of convenience lies in favour of the plaintiff?	... No.
3.	Whether the plaintiff will suffer an irreparable loss, if injunction is not granted in his favour?	... No.
4.	What order?	... As per final order

:: REASONS ::

06] **As to Point No.1 to 4 :-** The plaintiff has prayed for temporary mandatory injunction to remove construction of wall which is carried in front of the door of the tenanted shop. Temporary injunction is also sought to restrain defendant from interfering in peaceful possession of the plaintiff. In addition, the plaintiff has also prayed for issuance of direction against the defendant to open the lock of tenanted shop. As the plaintiff has prayed for mandatory temporary injunction to remove the construction of wall, the plaintiff has to prove strong prima-facie case in her favour. The plaintiff has also to prove that the balance of convenience lies in her favour and she will suffer irreparable loss, if injunction is not granted.

07] It is admitted by the defendant that the plaintiff is the tenant of the tenanted shop but rest of the allegation made by the plaintiff are denied. It is also admitted by the defendant that one civil suit was filed by the

plaintiff bearing RCS No.139/2001. The photo-copy of the Judgment is produced on record. The perusal of the photo-copy of the Judgment shows that the present plaintiff has instituted suit which was decreed in her favour and she was declared as tenant. In the said decree, the defendant was also directed to carry out construction of the wall of the tenanted shop at his own expenses. Again, perpetual injunction was granted to restrain the present defendant from causing obstruction to the possession of the plaintiff over the tenanted shop.

08] The plaintiff has filed photo-copies of various applications filed by her before P.I., New Kamptee Police Station on 13/5/2018, before Deputy Commissioner of Police dated 14/5/2018, before Nagar Parishad, Kamptee and Tahsildar, Kamptee dated 14/5/2018. All the above applications are similar in nature by which the plaintiff has prayed for taking action to said authorities. It is alleged in the said application that the plaintiff used to run laundry shop in the tenanted shop. On 13/5/2011, when she came to open the tenanted shop, she found that one wall was constructed in front of the tenanted shop.

09] It is alleged by the plaintiff that on 13/5/2018, when she tried to open the lock of the tenanted shop, defendant beaten her and threatened with dire consequences, if she opens the tenanted shop. However, no police report is filed on record showing that the defendant beat and threatened the plaintiff. All the applications submitted by the plaintiff before various authorities are also silent in respect of the alleged incident of beating and threatening to the plaintiff.

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10] As per the case of the plaintiff, the defendant has constructed wall and throw the board of her shop. The plaintiff has prayed for demolition of the said wall but she has not explained how her right of enjoyment of the tenanted shop is interfered due to the construction of the said wall. It is also not explained that how the construction of said wall cause interference in her possession over the tenanted shop. The plaintiff has prayed for issuance of direction against the defendant to open lock of the tenanted shop. However, the case of the plaintiff itself shows that the lock is placed by the plaintiff herself on the tenanted shop. It is also seen from the photograph, filed at document No.8 that the plaintiff has taken her photograph by sitting in front of the tenanted shop on the wall which is being constructed. If the plaintiff can take photographs by visiting constructed shop, it is possible for her to open the lock of the tenanted shop and to take out the cloths of customer lying in the said shop.

11] Beside, the defendant has submitted that the notice of demolition of house No.NL/1 is issued by the Municipal Council Kamptee as it is in dilapidated condition. The photo-copy of the notice dated 16/5/2018 is filed on record by the defendant which shows that Municipal Council has informed to the defendant that the said house is in dilapidated condition which may fall at any time, therefore, defendant is called upon by the said notice to repair the said house or to demolish it.

12] It is further submitted by the defendant, when his wife requested to the plaintiff to vacate the suit house, as the M.C.Kamptee had

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issued notice for demolition, the plaintiff quarreled with the wife of the defendant and threatened her. In support of the said fact, the defendant has produced on record photo-copy of the N.C.Report dated 22/5/2011. The perusal of the photo-copy of N.C.Report lodged by the wife of the defendant shows that the plaintiff along with Pawan and Santosh demolish the wall of the house and the plaintiff abused wife of the defendant and threatened her with dire consequences.

13] Considering prima-facie evidence available on record, I am of the opinion that no direction can be issued against the defendant to open lock of the tenanted shop as the plaintiff has herself locked the tenanted shop. It is further pertinent to note that how rights of the plaintiff are infringed by the construction of the wall is also not explained by the plaintiff. No case is made out for granting injunction as prayed by the plaintiff. The plaintiff has no prima-facie case in her favour. The plaintiff has no balance of convenience in her favour. She will also not suffer any irreparable loss, if injunction is not granted. Hence, I answer Point No.1 & 2 in the negative, and pass following order with reference to Point No.4 :-

ORDER

1. Applications Exh.No.5 & 8 stand rejected.
2. Costs in main cause.

Kamptee
Dt/- 01/06/2018

(A.D.Tidke)
Civil Judge (Jr.Dn.),
Kamptee

RCS No.50/2018
Laxmibai/Sunil

ISSUES

1. Whether the plaintiff proves that defendant has constructed wall in front of the tenanted shop?
2. Whether the plaintiff further proves that her rights in the suit property affected by the construction of the said wall?
3. Whether the plaintiff proves that defendant cause obstruction to the plaintiff's possession over the tenanted shop?
4. Whether the plaintiff is entitled for perpetual and mandatory injunction as prayed?
5. What order and decree?

Kamptee
Dt/- 01/06/2018

(A.D.Tidke)
Civil Judge (Jr.Dn.),
Kamptee

