

**ORDER BELOW EXH.05**  
**(Passed on 14<sup>th</sup> day of February, 2018.)**

This is an application filed by plaintiff under Order 39, Rule 1 and 2 of the Code of Civil Procedure, for temporarily restrained the defendants from making any interference or obstruction to the plaintiff from making construction as per sanction plan during the pendency of this suit.

**FACTS OF THE CASE IN NUTSHELL:-**

2. The present suit is filed by the plaintiff for permanent injunction against defendants in respect of the property i.e. entire house plot situated within Ward No. 15, Sheet No. 13, Nagar Bhumapan No. 470 & N.P.M.K. 194, having total area 660 Sq. Fts. (61.4 Sq. Mts.) and 144 Sq. Ft. (13.38 Sq. Mt.) constructed area 35.5 Sq. Ft. from plot within Ward No. 15, New No. 10, Old Property No. 8/3, New Property No. 199, Sheet No. 13, N.B.K. 472, the total area as per City Survey record 825 Sq. Ft. of land. (hereinafter referred to be as "the suit property").

3. It is the case of the plaintiff that, the plaintiff purchased plot bearing Nagar Bhumapan No. 470 & N.P.M.K. 194 with Water & Electric connection vide registered sale deed dated 5<sup>th</sup> April, 2010, for valuable consideration of Rs. 45,000/- from defendant No. 4. The plaintiff further purchased 144 Sq. Ft. (13.38 Sq. Mt.) plot from defendant No. 5 vide registered sale deed dated 16<sup>th</sup> May, 2011 for valuable consideration of Rs. 10,000/-. As per the sale deeds, he is in possession and enjoying as owner of the house and plot area. The plaintiff paid all the Municipal Council taxes, charges and other dues. The property is also recorded in the name of plaintiff in Municipal Council records.

4. The plaintiff further contended that, he intended to make

construction of new house and hence, he submitted plan to the concerned Municipal Council, Saoner for sanction vide application bearing No. BR-12 of 2013-14. The Municipal Council, Saoner granted permission for construction vide order No. 612 of 2013 dated 30.05.2013 along with sanctioned map. As per sanctioned map, the plaintiff started the construction on or about 15<sup>th</sup> July, 2014 and digged holes for the purpose of erecting columns. Defendant Nos. 1 to 3 came to the site at night and filled the pots digged for the purposes of the erecting columns.

5. Moreover, he contended that, defendant Nos. 1 to 3 have no right, authority to create hurdles and to interfere with the construction started by the plaintiff over the suit property. He further contended that, the plaintiff has purchased construction material and made huge investment. So, the plaintiff has brought this suit for permanent injunction along with an application for temporary injunction.

6. Defendant Nos. 1, 2 & 3 appeared and resisted the suit claim and present application by written statement along with counter claim for declaration and for permanent injunction vide Exh.24, stating that, the suit in question is not tenable as devoid of merits as the suit is simplicitor for permanent injunction without seeking declaration of the rights of the plaintiff.

7. Defendant Nos. 1 to 3 further contended that, they have already sold out their respective house properties to some persons and hence, all those purchasers and Municipal Council are necessary parties because, without having sanctioned plan of the construction, the plaintiff is trying to secure his illegal construction. The sanctioned plan has already been subsequently rejected and cancelled, hence, without having any legal

sanctioned plan, the suit is not tenable. They further contended that present suit has been filed only with an intention to harass the defendants. Infact and law, plaintiff has no right, title or interest in the suit property and for want of necessary parties, i.e. for non-joinder and also for mis-joinder of parties, the suit is liable to be dismissed.

**8.** Defendant Nos. 1 to 3 further contended that, the plaintiff has illegally started the construction activity and digged holes for the purpose of erecting columns. They further contended that, defendant Nos. 1 to 3 came to the site and requested the plaintiff not to make any sort of construction.

**9.** Defendant Nos. 1 to 3 further contended that, defendant No.5 has sold out his share at about 825 sq. ft. to one Rameshwar Botre by sale deed dated 17.01.2011 and they came to know that, on 16.05.2011 defendant No. 5 has sold out the open plot admeasuring 144 sq.ft. out of 825 sq.ft. to the plaintiff illegally. When the plaintiff tried to make illegal construction on the basis of illegal sanction, defendant Nos. 1 to 3 have taken strong objection in the office of Municipal Council, Saoner and thereafter, Municipal Council, Saoner provided the information about the sale deed dated 16.5.2011 which is illegally executed by defendant No. 5 in favour of plaintiff. They contended that, defendant No.4 has sold out his house property ad-measuring 660 sq.ft. by sale deed dated 05.4.2010 and now the plaintiff is claiming to be illegally the owner of house property ad-measuring 660 sq.ft.+ 144 sq.ft. total 804 sq.ft. which is not permissible in law because, so far as the suit property ad-measuring about 144 sq.ft. is concerned, it is part and parcel of common plot ad-measuring about 465 sq.ft.

**10.** It is further contended that, the open common plot ad-measuring at about 465 sq.ft. is yet to be partitioned and it is still intact, nobody has any

right and authority to sell out their undivided share this open space which is comprised of two latrine tank, which is used for storing the manure and garbage and hence, defendant No. 5 has no right and authority to sell out its part i.e. 144 sq.ft. The right of pre-emption of defendant Nos. 1 to 3 have been violated because, they are ready to purchase their undivided share of defendant No. 5 so far as the suit property ad-measuring about 144 sq.ft. is concerned. The alleged sale deed dated 16.5.2011 executed by defendant No. 5 in favour of plaintiff is itself illegal and not according to law because without having consent of other joint owners, defendant No. 5 has no right and authority to execute any sale deed in favour of the plaintiff.

**11.** It is also contended that, if the open plot comprised of about 465 sq.ft. which is admeasuring about 31x15 is agreed to be kept common for common use, defendant No. 5 has no right and authority to execute any sale deed. The alleged sale deed is absolutely illegal and is liable to be declared as null and void and also liable to be cancelled. It is contended that, the plaintiff is serving in Municipal Council, Saoner and hence, due to his influence on the basis of this illegal sale deed dated 16.5.2011 without mutating his name in record of rights, by managing and tackling the officials of Municipal Council, Saoner, got sanctioned the construction map in respect of the suit plot on 30.5.2013. Moreover, on the basis of this illegal sanction, the plaintiff started to dig the pits and hence, defendant Nos. 1 to 3 obstructed the plaintiff and requested him not to make any sort of illegal construction because, so far as the suit property ad-measuring 144 sq.ft. is concerned, it is kept for common use since the tenure of their ancestors and still it is intact which is not partitioned.

**12.** It is further contended that, on 25.4.2013, defendant No. 1, has filed an objection to Municipal Council. In spite of objection, Municipal

Council, Saoner has given illegal sanction to the illegal construction on 30.5.2013 vide permission order bearing No. 613 which is absolutely illegal. Thereafter, on 28.6.2013, Municipal Council, Saoner issued a letter to plaintiff bearing No. 630/2013 called upon the plaintiff to stop illegal construction, if the plaintiff proposed to undertake it with a dire consequences of proposed action of Municipal Council, Saoner under the provisions of Maharashtra Regional Town Planning Act, it is further called upon plaintiff by Municipal Council, Saoner that, plaintiff should comply with the legal formalities of mutating his name in the office of Municipal Council, Saoner. Thereafter, on 04.07.2013, defendant No. 1 filed an objection with Sub Registrar, Saoner, asking about alleged illegal sale deed.

**13.** On 07.07.2013, Municipal Council, Saoner issued letter to plaintiff bearing letter No. 98/2013 and called upon plaintiff to fill up the pit holes which the plaintiff has dug for the purpose of construction else the plaintiff shall be liable for criminal prosecution. On 12.07.2013 Municipal Council, Saoner further issued letter to defendant No.1 intimating him about the proposed action which is to be taken by Municipal Council, Saoner against the plaintiff. On 26.07.2013, defendant No.1 issued letter to Municipal Council, Saoner and pointed out all that illegalities committed by Municipal Council, Saoner at the time of giving permission/sanction for construction proposed to be undertaken by the plaintiff. On 10.07.2014, defendant No.1 lodged report to Police station, Saoner, about the illegal construction of plaintiff. Thereafter, by taking cognizance of various complaints on 10.7.2014 concerned Municipal Council cancelled the sanction dated 30.05.2013 by virtue of letter dated 10.07.2014, under Section 45 of Maharashtra Regional Town Planning Act, 1966 and called upon the plaintiff not to make any sort of illegal construction, else Municipal Council, Saoner shall prosecute the plaintiff under Section 53(1) and 54 of Maharashtra

Regional Town Planning Act, 1966.

14. In the event of cancellation of permission of construction, the plaintiff has no right and authority to file instant suit against defendants without making Municipal Council, Saoner as a party, hence, the suit filed by the plaintiff restraining the defendants is without merit. Hence, they prayed to reject the present application.

15. Defendant No.4 filed written statement vide Exh. No. 51 specifically contending that, the suit in question is not tenable as devoid of merits. It is settled law that, without seeking declaration of the right, the suit simplicitor for permanent injunction is not tenable and hence, the suit is liable to be dismissed.

16. He further contended that, the plaintiff has filed false and baseless suit for permanent injunction against defendant No. 4. The defendant Nos. 4 and 5 are the formal parties to the suit as the plaintiff has purchased the suit property from them and no relief is claimed against them. Therefore, there is no cause of action against the defendant no. 4 and it does not survive. With such submission, the defendants prayed for rejection of the application.

17. Defendant No.5 filed written statement vide Exh. No. 37 specifically contending that, the answering defendant has sold the property, to the plaintiff by registered sale deed dated 16.5.2011, and also hand over possession to the plaintiff of being the owner of the property, since then, defendants have no concern with the property. The plaintiff has unnecessarily dragged to the present defendant in this matter, without claiming any reliefs against him. Therefore, he prayed to dismiss the present suit with heavy costs.

18. Heard learned counsel Shri.V.D. Muley for the plaintiff, learned counsel Shri. C.S. Lahbar for defendant Nos.1 to 3, learned counsel Shri. V.B. Mahant for defendant No.4 and Shri.S.P Jain for defendant No.5 vehemently. Following points arose for my determination, to which I have recorded my findings, for the reasons to follow:

<b><u>SR.NO.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
01.	Does the plaintiff prove prima facie case?	<b>In the Affirmative</b>
02.	Whether the plaintiff prove that balance of convenience lies in his favour?	<b>In the Affirmative</b>
03.	Does the plaintiff further prove that he will be put to irreparable loss in case the injunction is refused?	<b>In the Affirmative</b>
04.	What order ?	<b>Application is allowed.</b>

### **REASONS**

#### **AS TO POINT NOS. 1 to 3 :-**

19. To show prima facie case, Plaintiff filed documents with list (Exh.4). Copy of sale deed dated 16.05.2011 & 05.04.2010 (Exh.4/1 and 4/2), Certificate issued by M.C.(Exh.4/3) and Sanctioned map (Exh.4/4).

20. Defendant Nos.1 to 3 have filed copy of Partition deed 14.02.1992 (Exh. 58/1), Sale deed dated 02.06.1993 (Exh. 58/2), Sale deed dated 21.5.1997 (Exh. 58/3), Sale deed 29.01.2009 dated (Exh. 58/4), Sale deed 28.10.2010 (Exh. 58/5), Sale deed dated 17.01.2011 (Exh. 58/6), Application to Municipal Council dated 25.04.2013 and 04.05.2013 (Exh. 58/7, 58/8), Application to T.I.L.R. dated 07.05.2015 (Exh. 58/9), Certificate

issued by M.C. dated 30.05.2013 (Exh. 58/10), Application to Municipal Council dated 27.06.2013 (Exh. 58/11), Application to T.I.L.R. dated 27.06.2013 (Exh. 58/12), Letter issued by M.C. dated 28.06.2013 (Exh. 58/13), Application to Assistant Registrar dated 04.07.2013 (Exh. 58/14), Letter issued by M.C. dated 07.07.2013 and 12.07.2013 (Exh. 58/15, 58/16 and 58/17), Application to M.C. by defendants dated 26.07.2013 (Exh. 58/18), Report dated 10.07.2014 (Exh. 58/19), Letter by Sub Registrar dated 10.07.2013 (Exh. 58/20), Letter by M.C. dated 10.07.2014 (Exh. 58/21) and application by plaintiff dated 11.07.2014 (Exh. 58/22).

**21.** In order to avoid repetition of discussion, I am considering these points jointly. After considering the rival pleadings and submissions made by both the parties and after perusing the documents on record, it prima facie reveals that, it is admitted by all parties to suit that, defendant No.5 has sold out the suit plot to plaintiff. The contention of defendants is that, suit property is yet to be partitioned and hence, defendant No.5 has without any legal right and authority transferred the suit plot to plaintiff.

**22.** As per defendants, defendant Nos. 1 to 3 are sons of Vasantrao Shamraoji Naik and defendant Nos. 4 and 5 are sons of Shamraoji Naik. Late Shamraoji Naik was having the ancestral house property admeasuring 1965 sq.ft. along with adjoining common plot admeasuring 468 sq.ft. From the record it prima-facie reveals that, the disputed plot was the ancestral property inherited by the heirs of Shamraoji i.e. defendants. After perusal of partition deed below List Exh.18, it prima-facie reveals that, house property partitioned amongst Vasantrao, Ashok, Chandrashekar and Purushottam by virtue of partition deed dated 14.02.1992. It prima-facie reveals that, the alleged partition deed signed by four sons of deceased Shamrao i.e. father of defendant No.1 to 3 and defendant Nos.4 and 5. Hence, the contention of

defendants that, property is yet to be partitioned is having no force. It is also pertinent to mention that, as per defendant Nos.1 to 3 that, they have already sold out their share respectively.

23. It is pertinent to note that, as per the contention of defendants that, defendant has no right to sell out the suit plot and plaintiff got sanctioned map illegally is devoid on merits and full fledged trial is essential to decide these points. At the time of deciding an application for temporary injunction, only court has to look prima facie case. From the face of record, it prima-facie reveals that, plaintiff has purchased suit plot by virtue of sale deed dated 16.05.2011 for consideration and he having right to enjoy as owner. It is settled principles of law that, true owner can not be restrained from enjoying his right.

24. Defendants have pleaded that, there was a latrine tank and the suit plot is for common use for which evidence by both parties is to be considered. Hence, at this stage I can not go into the trial of the case in hand. In support of the case of plaintiff, I relied upon the case of authority of **C. J. International Hotels Ltd. And others v. N.D.M.C. and others (AIR 2001 Delhi, 435,)** in which the Hon'ble Delhi High Court held that,

*“at the stage of deciding the application for temporary injunction, the court is not required to go into the merits of the case in detail. What the court has to examine is (i) plaintiff has prima facie case to go for trial; (ii) protection is necessary from that species of injuries known as irreparable before his legal right can be established; and (iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it. The principles governing the grant of injunction are well settled. The power is discretionary and is to be exercised on sound judicial principles”.*

Therefore, in view of above discussion and the authority in the case of **C.J. International Hotels Ltd. And others (Supra)**, is applicable for a limited purpose to decide the present application. In *Anand Prasad Agarwaslla Vs. Tarkeshwar Prasad and others, reported in AIR 2011 Supreme Court Pg.No.2367* in which the Hon'ble Apex Court has held as under :

"It may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction....."

25. It is also incumbent to note that, the sale deed is executed and as per the contentions of defendant No.5, the possession of the suit plot has been handed over to plaintiff after its duly execution. As the temporary injunction is an equitable relief which is completely based on the possession. In the case in hand, defendant Nos.1 to 3 have not disputed the possession of the plaintiff, on the other hand, defendant Nos. 1 to 3 in their written statement have admitted that, they have restrained the plaintiff from constructing on the suit property. Hence, the act of defendant Nos. 1 to 3 itself shows their intention to restrain the plaintiff from constructing the house on the suit plot.

26. In the matter in hand, plaintiff's case is on the basis of registered sale deed and he having possession over the suit property. As such, I feel that to prove the better title in respect of the suit field it would require a full fledged trial on merit. Hence, in the case in hand, the plaintiff has file on record certificate issued by Municipal Council, Saoner from which it prima-facie reveals that concerned Municipal Council permitted to plaintiff for construction. It is pertinent to note that, plaintiff claiming as owner on the basis of registered sale deed and being owner he cannot be restrained as defendant No.5 sell out the suit plot to plaintiff and the plaintiff had purchased the suit plot for the valuable consideration. From the record it

prima facie reveals that, the plaintiff is in the possession of the suit plot. As per the documents filed by the plaintiff the name of the defendant No.5 reflects in the tax receipt of Municipal Council record for the year 2005-06 to 2008.

27. Prima facie case means any bonafide contest between the parties, which requires an investigation by the court. Further, for having the prima facie case in his favour, one is not required to show that he is about to win the battle. On the application of these principles to the present set of facts, it appear that Plaintiff is purchaser of suit plot for value. On the other hand, it is alleged that Defendant Nos. 1 and 3 have attempting to disturb peaceful possession of Plaintiff.

28. On application of this principles to the present set of facts, circumstances and documents on record, it prima-facie reveals that, the plaintiff having a better title than defendants by way of registered sale deed. Hence, plaintiff has made out prima-facie case in his favour and balance of convenience also lies in his favour. If the temporary injunction is not granted, then irreparable loss would be caused to the plaintiff only as plaintiff seems to be prima-facie owner and he having interest, right in the suit property. It also reveals prima-facie that, he is in the possession of the suit property and he got permission from the sanctioning authority for construction on the suiti plot. In view of my above discussion I answered point Nos. 1 to 3 in the affirmative.

**AS TO POINT NO.4 :**

29. In view of my finding as to point Nos. 1 to 3, certainly, the plaintiff is entitled to the relief of temporary injunction. As the documents filed by the plaintiff itself made prima facie case in his favour to restrain the

defendants, hence he is entitled for injunction against the defendants. Hence, this application deserves to be allowed. Hence, I pass the following order as under :-

**:- O R D E R :-**

- 1) The application (Ex.5) is hereby allowed.
- 2) Defendant Nos. 1 to 3 and any other person on their behalf are hereby restrained from making any interference or obstruction to the plaintiff from making the construction on the suit plot.
- 3) Costs in cause.

(Dictated and pronounced in open Court.)

**Saoner.**  
**Dated :14.02.2018.**

**( V. V. Joshi )**  
**2<sup>nd</sup> Jt. Civil Judge Jr. Dn.,**  
**Saoner, District Nagpur.**

**C E R T I F I C A T E**

I affirm that the contents of the this PDF file order are same word to word, as per the original Order.

Name of the Stenographer      :-      S. D. Bhimte (Lr. Gd)