



CNR No.-MHNG100008102019
Spl.C.S.No.22/2019
Shyamlal Vs. Prakash

ORDER BELOW EXH. 05

(Order passed on 09th day of March, 2020)

[01] The plaintiff has filed present application as per Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction thereby restraining defendant from alienating or creating third party interest over the field bearing gat No.182/3, adm. area 1.61 H.R., having Class-I occupancy of mauza Kusba, Tah. Kuhi, Dist. Nagpur till final decision of the suit. *(The property described above would here in after be referred to as the suit property.)*

[02] On the basis of facts and documentary material placed on record following points arise for my determination to which I have recorded my findings for the reasons to follow.

Sr.No	Points	Findings
1	Whether prima-facie case lies in favour of the plaitniff ?	In the affirmative
2	Whether balance of convenience lies in favour of the plaitniff ?	In the affirmative
3	Whether irreparable injury would occassion to the plaintiff, if temporary injunction is not granted ?	In the affirmative
4	What order ?	Application is Allowed.

REASONS.**As to point no.1 to 4 :-**

[03] The above points are interlinked to each other, hence are taken for discussion and determination at once. In order to entitle for injunction it is incumbent upon the plaintiff to show that he has prima facie case and further also to show that the balance of convenience lies in grant of the temporary injunction application. Again the plaintiff is duty bound to show that if the temporary injunction is not granted then irreparable injury would occasion to him. Prima facie case means a case that there is serious question to be tried in the suit and that on the facts before the court, there is possibility of the plaintiff being entitled to the relief ask by him. Likewise it must be shown that the courts interference is necessary to protect the plaintiff from that species of injury which the court feels irreparable.

[04] Heard Ld. Counsel Shri. S.H. Talmale for the plaintiff.
Also Heard Ld. Counsel Shri. S.M. Pimpalkar for the defendant.

[05] Considering the ingredients necessary for granting the relief of T.I. if we go through the pleading as well as documentary material supplied by the plaintiff on record, it has been averred that the defendant being owner and possessor of the suit property has entered into an agreement dt.28.12.2016 to sale out the same @

Rs.3,00,000/- per acre. It is averred that on the date of agreement plaintiff paid Rs.2,70,000/- as an earnest amount to the defendant. It is averred that as per decided terms it was for defendant to get measured the suit property, to collect all necessary documents including no dues certificate etc and to execute sale deed in favour of the plaintiff. It is averred that despite of getting sufficient opportunity the defendant neither get measured the suit property nor collect the necessary documents for execution of sale deed.

[06] The plaintiff has performed his part of contract. However the defendant is avoiding to perform his part. The entire attitude on the part of defendant itself shows that he is not willing to perform his part of contract. The plaintiff came to know that the defendant is intending to create third party interest in respect of suit property. If defendant succeeded in creating third party interest then the plaintiff would suffer irreparable loss and it will result in multiplicity of the proceeding. Hence, this application for restraining defendant from alienating or creating third party interest over the suit property.

[07] As against this defendant has resisted the suit claim. The defendant has specifically denied the agreement of sale dt.28.12.2016. It has been contended that defendant never intends to sale out the suit property in favour of the plaintiff. It is averred that the plaintiff is an illegal money lender. During the month of December 2016 the

defendant was in a urgent need of some money and hence through maternal uncle defendant approached the plaintiff for obtaining loan amount of Rs.1,50,000/- for an interest of @ 5% per month. It is averred that for the security of said loan amount the plaintiff has got executed the document styled as an agreement to sale. It is averred that the agreement of sale got executed by plaintiff is false and forged one. The defendant is in cultivating possession of suit property. The plaintiff has no right to get execute the sale deed. Thus, defendant prayed for rejection of the application for T.I.

[08] Considering the rival contentions raised by both sides, if we go through the recitals of agreement to sale on record, prima facie an agreement is seems to be executed by defendant in favour of the plaintiff. Defendant by denying the agreement to sale dt. 28.12.2016 has put forth the story of execution of document for the security of loan amount, however no evidence is seems to have been supplied to substantiate this fact by defendant. Prima facie as per document dt.28.12.2016 an agreement regarding sale transaction is seems to be taken place between the plaintiff and defendant. Moreover, defendant has accepted the fact of receiving an amount of Rs.1,50,000/- from plaintiff.

[09] Thus, prima facie from the face of agreement to sale on record dt.28.12.2016, it goes to show that after receiving part

consideration amount defendant has entered into an agreement to sale out the suit property in favour of the plaintiff. So far as the defense put forth by defendant is concern, even though it has been alleged that the real transaction taken place with the plaintiff was about security of handloan amount, however at this prima fascie stage, there is no material to believe the contention put forth by defendant. Moreover, defendant can establish this fact on merit.

[10] It has been submitted on behalf of the plaintiff that if defendant succeeded in alienating or creating third party interest over the suit property the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Considering the fact and circumstances of the case at hand if during pendency of suit defendant will alienate or create third party interest in respect of suit property then it may result in multiplicity of proceeding and very purpose of filling of present suit may frustrate.

[11] Thus, from the entire material placed on record, I came to the conclusion that the plaintiff has prima fascie case. Prima fascie case follows the balance of convenience. So far as irreparable injury is concern, if temporary injunction prayed by the plaintiff not granted defendant will alienate or create third party interest and thereby the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Hence, in view of the discussion given supra, I

answer point no.1 to 3 in affirmative and in answer point no.4 I pass the following order.

ORDER

- [01] The application (Exh.05) is hereby allowed.
- [02] Defendant is hereby temporarily restrained from alienating, transferring or creating any interest in respect of suit property till final decision of this suit.
- [03] Costs in cause.
- [04] Dictated and pronounced in open court.

Umrer.
Date : 09/03/2020

(S. K. Fokmare)
Civil Judge Senior Division, Umrer.

Certificate

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

Name of Stenographer : **Mr. Mahendranath D. Nagpure.
Stenographer (Grade III)**

Court Name : Civil Judge Senior Division, Umrer

Order checked and signed on : 09/03/2020

/home/ubuntu/1-C.J.S.D./ORDERS/2-ORDER BELOW EXH.5/2-SPL.
CIVIL SUITS/