



CNR No.-MHNG100010352017

Spl.C.S.No.55/2017

(Old Spl.C.S.No.439/2017)

Narayan Vs. Sunita+3

**ORDER BELOW EXH. 05**

*(Order passed on 21<sup>st</sup> day of December, 2019)*

[01] Plaintiff has filed present application as per Order 39 Rule 1 and 2 R/w. Section 151 of the Code of Civil Procedure for grant of temporary injunction and thereby restraining the defendant no.1 from causing any sort of obstruction to his peaceful possession over the suit field and also for restraining her from alienating or creating third party interest over the suit field bearing survey no.264, Adm. Area 1.18 H.R. land of mauza Dhurkheda, Tah. Umred, Dist. Nagpur till final decision of the suit. *(for the sake of brevity the property described above would hereinafter be referred to as “the suit field”)*.

[02] The points for determination along with my findings thereon are as there under.

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

**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] Perused the application and say. Heard Ld. Counsel Shri. B.W. Patil for plaintiff and Shri. B.K. Pongde for defendant no.1 to 3. Also gone through the written notes of argument supplied by the plaintiff at Exh.35. Considering the argument advanced by both sides, if we go through the pleading as well as documents supplied by both plaintiff and defendants, it has been alleged by plaintiff that the defendant no.1 to 4 in collusion with each other have played fraud with the plaintiff and thereby they have got executed the registered sale deed bearing no.3267/2016 dt.15.10.2016. It has

been contended by the plaintiff that as per advise of defendant no.3 and 4 he was intending to sale out the suit field. The defendant no.3 and 4 have offered to sale out the suit field for consideration of Rs.15,00,000/-.

[05] It is alleged that on 15.10.2016 the defendant no.3 and 4 have taken the plaintiff to the office of Sub-Registrar for execution of an agreement to sale in favour of the defendant no.1. It is alleged that the defendant no.1 to 4 on the pertext of execution of an agreement to sale have got executed the registered sale deed from plaintiff. It is averred that the plaintiff is illiterate and old aged person of 75 yrs. The defendant no.3 and 4 were having family relations with plaintiff and hence plaintiff under the undue influence of defendant no.3 and 4 have put forth his thumb impression upon the document shown to him. It is alleged that the defendant no.1 to 4 only by paying cash of Rs.25,000/- have got executed the registered sale deed dt.15.10.2016. It is alleged that the defendant no.1 never paid the consideration of Rs.7,55,000/- as mentioned in the sale deed. It is averred that the plaintiff never handed over the possession of suit field to defendant no.1.

[06] It is averred that as soon as, plaintiff came to know about the fraud committed by the defendant no.1 to 4, he instantly lodged his grievance to concern Talathi, Revenue Inspector, Tahsildar and the Police Station Umred. It is averred that the plaintiff is in

cultivating possession of the suit field. The sale deed got executed by defendant no.1 dt.15.10.2016 is forged as well as false one. The defendant no.1 with the help of said registered document is trying to dispossess the plaintiff. The defendant no.1 is also trying to alienate or create third party interest over the suit field. The plaintiff prayed for restraining the defendant no.1 from disturbing his peaceful possession over the suit field. Plaintiff also prayed to restrain the defendant no.1 from alienating or creating third party interest over the suit field.

[07] On the other hand, defendants have resisted the application for T.I. It has been contended that the plaintiff after receiving huge consideration amount of Rs.7,55,000/- has executed the registered sale deed bearing no.3267/2016 dt.15.10.2016 in favour of the defendant no.1. It has been contended that as per registered sale deed the defendant no.1 has obtained lawful possession over the suit field. The suit field has been mutated in the name of defendant no.1. The defendant no.1 is in cultivating possession of the suit field. The plaintiff on the instigation of his grand son has filed this suit. It has been specifically denied that the defendant no.1 to 4 by playing fraud have got executed the sale deed dt.15.10.2016. It has been contended that the suit claim and this application is not tenable in the eyes of law. Thus, defendants prayed for rejection of the application for T.I.

[08] Considering the averments made by both sides, if we go through the documents on record, prima facie as per registered sale deed bearing no.3267/2016 dt.15.10.2016, a suit field is seems to be sold out by plaintiff in favour of the defendant no.1. Likewise as per mutation entry no.998/2017 the suit field is seems to be mutated in the name of plaintiff. Thus, as per title deed and the latest revenue record, prima facie defendant no.1 is seems to be a owner and possessor of suit field. Again on going through 'C' copy of measurement case no.2559/2018 dt.09.07.2018 the suit field is seems to be got measured by defendant no.1 Sunita Yuvraj Nade.

[09] Here by way of this application even though plaintiff prayed for restraining the defendant no.1 from causing any sort of obstruction to his possession over the suit field, however as per available documentary evidence on record the plaintiff is not seems to be in possession of suit field. Per contra, as per available documents including the registered sale deed dt.15.10.2016, the revenue record and the 'C' copy of measurement dt.09.07.2018 the defendant no.1 is seems to be in possession of suit field. Thus, so far as the averments regarding possession of plaintiff over suit field is concern no prima facie case is seems to be lies in favour of the plaintiff.

[10] However so far as another relief regarding restraining defendant no.1 from alienating or creating third party interest over

the suit field is concern, the dispute regarding the payment of consideration amount is seems to be pending between plaintiff and defendant no.1. Even though it has been contended by defendants that vide registered sale deed bearing no.3267/2016 dt.15.10.2016 the defendant no.1 has paid whole consideration of Rs.7,55,000/- to the plaintiff, however admittedly instantly after execution of registered sale deed i.e. on 18.10.2016 the plaintiff has lodged his grievance about non payment of consideration amount to concern authority i.e. Talathi, Revenue inspector, Tahsildar and the Police Station Umred.

[11] During said complaint dt.18.10.2016, it has been alleged by the plaintiff that even though the defendant no.1 has agreed to pay the consideration amount of Rs.15,00,000/-, however in fact she has paid only the meager amount of Rs.25,000/-. Thus, instantly after execution of sale deed dt.15.10.2016 the plaintiff has put forth his grievance regarding non receipt of consideration amount from defendant no.1. Thus, the dispute regarding payment of consideration is seems to be pending between plaintiff and defendant no.1. Hence, during pendency of suit if defendant no.1 succeeded in alienating or creating third party interest in respect of suit field then it may result in multiplicity of the proceeding and the very purpose of filing of present suit will frustrated.

[12] Thus, on scrutiny of the entire material placed on record,

I came to the conclusion that there is serious question with the plaintiff which he wants to try on merit. Thus, prima facie case seems to be lies in favour of the plaintiff. Prima facie case follows balance of convenience. So far as irreparable injury is concern, as discussed above during pendency of suit if defendant no.1 succeeded in alienating or creating third party interest in respect of suit field, then it may result in multiplicity of the proceeding and the very purpose of filing of present suit will frustrated. Hence, so far as the relief regarding alienation or creating of third party interest over the suit field is concern I answer point no.1 to 3 in affirmative and in answer to point no.4 I proceed to pass following order.

**ORDER**

- [01] The application (Exh.05) is partly allowed.
- [02] The defendant no.1 is hereby temporarily restrained from aliniating, transferring or creating any interest in respect of suit field till final decision of this suit.
- [03] Costs in cause.
- [04] Dictated and pronounced in open court.

Umrer.  
Date : 21/12/2019

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

**Narayan Vs. Sunita+3**  
**Order Below Exh.05 (T.I. Appln)**

**8**

**Spl.C.S.No.55/2017**  
**(Old Spl.C.S.No.439/2017)**

**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 dictated on : 21/12/2019

Transcription ready on : 21/12/2019

Order checked and signed on : 21/12/2019

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

**Contd..**