

MHNG130001642020



R.C.S. No. 08/2020  
Shivbalak Vs. Dinesh & Oths.

**Order Below Exh. 17**  
(Passed on 11/04/2023)

The plaintiff has filed the present application vide Order XXXIX, Rule I and II of the Code of Civil Procedure, for order of temporary injunction restraining defendants for creating third party interest by way of sale, mortgage, lease etc. till the decision of suit.

02] Ongoing through the pleadings, documents and arguments of Shri. S.C. Kela for plaintiff and Shri. A.G. Karemore for defendants, the following points arise for my consideration and I have discussed them along with my findings as under :

<b><u>Sr. No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Whether the plaintiff has made out prima facie case ?	..In the affirmative.
2.	Whether the balance of convenience lies in his favour ?	..In the affirmative.
3.	Whether irreparable loss will be caused to him, if the temporary injunction is refused ?	..In the affirmative.
4.	What order ?	The application

is allowed.

## REASONS

### As to points No.1 to 3 :-

03] All the points are interconnected and related with each other hence in order to avoid repetition, the discussions of the points are made together. I have heard learned counsel for plaintiff Shri. S.C. Kela and Shri. A.G. Karemore learned counsel for the defendants at length. In order to prove the points, the plaintiff and defendants have filed documents on record which will be discussed here-in-after whenever is necessary.

04] The plaintiff submitted that he is lawful owner of house No. 507/2, situated at Ward No. 3, Hiwara Bazar, Post Hiwara Bazar, Tah. Ramtek, Dist. Nagpur. That, the abovesaid house property/shop is admeasuring about total 76 Sq.Mtrs. and built up area is 64 Sq.Mtrs. (this property is here-in-after called as “*suit property*”).

05] The Advocate of plaintiff argued that the plaintiff is lawful owner of the suit property. He is paying the regular Government tax of the suit property. Defendant is in possession as a tenant in the suit property. In support of his argument, the Advocate of plaintiff relied on the tax receipt and assessment extract of suit property filed along with Exh. 04. These documents are public document and prima-facie shows that the plaintiff is lawful owner of the suit property. The defendant also

by filing written-statement at Exh. 10 admitted the ownership of plaintiff. On behalf of the defendant Advocate Shri. Karemore argued that the present suit is filed by plaintiff for ejectment, possession and recovery of rent. The Advocate of defendant also admitted the ownership of plaintiff over the suit property. The Advocate of defendant argued that the plaintiff executed the agreement of sale deed in favour of original defendant namely Dinesh S/o. Jaipal Dharwal and delivered the possession of the suit property in favour of original defendant. The Advocate of defendant denied the property given on the basis of rent. The Advocate of plaintiff also argued that not filed on record any document relating to the rent receipt. The Advocate of defendant argued that the defendant suppressed the material facts. The Advocate of defendant also relied on the document filed along with Exh. 32 that agreement of sale deed. The xerox copy filed by the Advocate of defendant is not admissible in evidence. On the contrary, the Advocate of plaintiff argued that the defendant is not filed the suit on the basis of agreement to sale deed. The document filed by defendant is illegal and not inforcible on the ground of limitation. The Advocate of plaintiff argued that the defendant by taking dis-advantage of the possession trying to create third party interest. In this facts and circumstances, I came to the conclusion that if the defendant create third party interest by taking dis-advantage of the possession then the irreparable loss will be caused of the plaintiff. The plaintiff

prima-facie prove the case, the balance of convenience is in favour of the plaintiff. Hence, I answer point No. 1 to 3 in the affirmative and my findings accordingly.

**As to Point No. 4 :-**

06] Considering the discussions made regarding point No. 1 to 3, it is necessary to restrain the defendant to create third party interest over the suit property till the final decision of suit. Hence, in the result and in answer to point No. 4, I pass following order.

**ORDER**

1. Application is allowed.
2. The defendants are hereby temporary restraining to create third party interest through himself, their agents, assigns, servants, etc. or anybody acting on behalf of them by way of sale, mortgage, lease etc. over the house property bearing No. 507/2, situated at Ward No. 3, Hiwara Bazar, Post Hiwara Bazar, Tah. Ramtek, Dist. Nagpur till the decision of the suit.

Ramtek.  
Dt. 11/04/2023.

(H. S. Satpute)  
Jt. Civil Judge, Jr. Dn.,  
Ramtek.