

**Reg. Civil Suit. No. 18/2017.  
CNR : MHNG150002032017.  
Prabhakar Vs. Bhaiyya & Others.**

**ORDER BELOW EXH.19**  
( Passed on 25<sup>th</sup> September, 2018 )

The application is filed by the defendants under Order 39 Rule 1 and 2 of The Code of Civil Procedure, 1908 for interim injunction restraining the plaintiff from alienating the suit plot / property and from disturbing their possession over the suit plot / property.

2] The points for determination alongwith the findings thereon with the reasons therefor are as under,

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1. Have the defendants prima facie case ?	... No
2. Is the balance of convenience in favour of the defendants ?	... No
3. Whether the defendants will suffer irreparable loss on refusal of injunction ?	... No
4. What order ?	... The application is rejected.

**REASONS**

**AS TO POINT NOS. 1 TO 3 :**

3] To avoid repetition, reasons as to point nos. 1

to 3 are given together.

4] The defendant in support of their case, produced the documents viz;

- 1) Copy of sale deed dt.09/02/2005,
- 2) Copy of agreement to sale dt. 24/02/2004,
- 3) Copy of legal notice dt. 01/02/2017,
- 4) Copy of Layout Map

5] The contentions of defendant no. 3 are that by virtue of the sale deed dt. 09/02/2005, the plaintiff become the owner of the suit plot. At this juncture, the possession of the suit property was never handed over to the plaintiff which also appears from the recital in the suit. The possession of the suit property was never handed over to the plaintiff from the date of execution of the sale deed, and plaintiff was and is well aware of the defendant's peaceful possession over the suit property. Thus, the possession of the defendants over the suit property was open, peaceful and hostile to the knowledge of the plaintiff. The plaintiff had not even attempted within 12 years from the date of cause of action of the sale deed to take possession of the suit property from the defendants and had deliberately allowed the defendants to enjoy / usufruct of possession of the suit property. Hence, the possession of defendants is adverse.

6] The defendants further submitted that the suit plot / property is developed and maintained by the defendants. Thus, uninterrupted peaceful possession of the defendants over the suit property was well within the knowledge of plaintiff, though title in respect of the suit property was transferred in favour of plaintiff, but the possession of suit property has not been transferred at any point of time till today. Thus, the possession of the defendants over the suit property is hostile possession with the knowledge of plaintiff. Thus, the suit property is in possession of the defendants as an adverse possession. Thus, the defendants became owner of the suit property by virtue of adverse possession. Since 09/02/2005, the defendants are in peaceful enjoyment and possession of the suit property to the knowledge of defendants and there is no interruption to the peaceful possession of the defendants over the suit property, but now the plaintiff is continuously trying day by day to dispossess the defendants from the suit property by visiting it without following the due process of law. Thus, the application be allowed.

7] Plaintiff opposed the application by contending that defendant no. 1 and 2 were the joint owners of the suit plot / property. Defendant no. 3 is the constituted attorney of defendant no. 1 and 2. The defendants have

demarcated layout on the suit property wherein total 120 plots have been demarcated. After demarcation, the defendants have sold out the plots to various purchasers in the name of M/s. Sai Nagar Agency, Butibori, Dist. Nagpur. The plaintiff has purchased the plot no. 70, admeasuring 150 Sq.Mtr., situated at Mouza Bidganeshpur, P.H. No. 77, Tah. Hingna, Dist. Nagpur. for the total consideration of Rs.40,350/- by way of agreement of sale dt.25/02/2004 executed by the defendants. The said agreement for sale is signed by defendant no. 3 on behalf of defendant nos. 1 and 2. In terms of agreement for sale, the plaintiff has paid the entire consideration of Rs.40,350/- time to time to the defendants, and also paid charges for registration of sale deed, which is received by all the defendants. After receipt of consideration and registration charges of the suit property. The defendants have executed registered sale deed bearing No. 684/2005 dt. 09/02/2005 before the Sub-Registrar, Hingna in favour of the plaintiff in presence of two witnesses. However, the consideration shown in the sale deed as Rs.16,140/- to save income tax.

9] The plaintiff further submitted that in view of the sale deed, the plaintiff has become the absolute owner of plot no. 70 i.e. the suit plot. As per the sale deed, the defendants have given symbolic possession of the suit plot to the plaintiff and assured to give actual

physical possession of the suit plot by measuring the same to the plaintiff. The plaintiff, time to time, requested the defendants for measurement, delivery of actual possession and "No Objection Certificate" for mutation in Village Panchayat as well as revenue department, but the defendants each and every time for this or that reason used to give bare assurances about measurement and delivery of the actual physical possession of the suit plot very soon and in this way time passed on. The plaintiff is residing at Vag Mandhal, and therefore, he was not in a position to visit. Lastly, few months back, the plaintiff has visited defendant no. 3 and requested defendant no. 3 for measurement, possession and N.O.C. for mutation of suit property whereon defendant no. 3 assured that he will call the plaintiff after fixing the date of measurement and possession but till today there is no intimation for the same. The overall conduct on the part of defendants shows that they are avoiding the same for oblique motive and therefore as a last resort the plaintiff has issued legal notice dt.01/02/2017 through his counsel to the defendants, and thereby called upon the defendants to deliver the actual physical possession of the suit plot by way of measurement, and also to issue "No Objection Certificate" for the mutation within two days from the date of receipt of notice. The defendants have till filing the present suit neither measured the plot nor handed

over its actual physical possession to the plaintiff and also not issued "No Objection Certificate" for mutation. Thus, the application is liable to be rejected.

10] The execution of the registered sale deed of the suit plot in favour of the plaintiff is admitted by the defendants. Admittedly, the plaintiff became owner of the suit plot by virtue of the registered sale deed dt.09/02/2005 bearing registration no. 684/2005. The contentions of the plaintiff alongwith contents of the sale deed disclose that symbolic possession of the suit plot was given to the plaintiff.

11] Undisputedly, even though the registered sale deed of the suit plot was executed in favour of the plaintiff by defendants, actual physical possession of the suit plot was not delivered to the plaintiff.

12] Original suit is for declaration of ownership, recovery of possession of the suit plot and injunction restraining the defendants from alienating the suit plot. On the other hand, the counter claim is for declaration of ownership by way of adverse possession and injunction restraining the plaintiff from alienating the suit plot and disturbing the defendant's possession thereon. The defendants are seeking injunction in this application to restrain the plaintiff from alienating the suit plot and

disturbing their possession on it.

13] As per contentions of the defendants, their possession over the plot became adverse to the plaintiff on execution of the sale deed dt. 09/02/2005, and the suit of plaintiff is barred by limitation. However, prima facie it can be seen that the suit of plaintiff has been registered on 06/02/2017, and the day of execution of the sale deed is 09/02/2005. The suit for recovery of possession based on title under Section 5 of the Specific Relief Act can be filed within 12 years from the date on which possession of the defendant becomes adverse of the plaintiffs as per the Article 65 of the Limitation Act. Thus, apparently, the suit of plaintiff appears to have been filed within 12 years from the date of execution of the sale deed dt. 09/02/2005. The question that when possession of the defendants over the suit plot became adverse to the plaintiff is a question of fact which could be decided after a fullfledge trial. Because, contendedly, on execution of the sale deed, the defendants had assured to the plaintiff to get measurement of the suit plot and later on to handover its actual physcial possession to the plaintiff.

14] Even though the defendants have disputed receipt of the consideration of Rs.40350/-, they did not specifically deny receipt of the consideration of

Rs.16,140/- as per the sale deed. The sale deed also discloses the contents that the amount of consideration was paid to the defendants. No amount of money or consideration is contendedly due from the plaintiff to the defendants for the suit plot.

15] In the instant proceedings, the defendants did not specify the contentions that the plaintiff is about to dispose off or alienating the suit plot. Thus, no threat or apprehension of disposing of or alienating the suit plot is expressed in the instant application.

16] As per contentions of the defendants the plaintiff is continuously trying day by day to disposes them from the suit property / plot by visiting the suit plot without following due process of law. However, no incident creating reasonable threat or apprehension of dispossession of the defendants from the suit plot is stated by the defendant. Moreover, the plaintiff has adapted due process of law by filing the suit for recovery of possession of the suit plot. Thus, the plaintiff did not resist to possession of the defendants over the suit plot by claiming the same with him even by words by way of pleadings. In view of the prima facie facts and circumstances of the case, in my considered view, there is no reasonable threat or apprehension for exigency or emergency to grant interim injunction restraining the

plaintiff from disturbing possession of the defendants over the suit plot.

17] In view of such prima facie facts and circumstances of the case, it cannot be held that the defendants have a prima facie case or balance of convenience in their favour for the temporary injunction. Moreover, the defendant will not suffer irreparable loss on refusal of injunction. Resultantly, point no 1 to 3 are answered negative, and the following order is passed.

### **ORDER**

- (1) The application is rejected.
- (2) Parties to bear their own costs.

Hingna.  
Date : 25/09/2018.

Sd/-  
( A.G. Deshmukh )  
Civil Judge Jr. Dn.  
HINGNA

Case argued on	:	14/08/2018
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