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**Regular Civil Suit No. 38/2018**  
**CNR:MHNS13-000250-2018**

**Order Passed Below Exh. 5**  
**Pramod Vs. Gaurav and others**

This is an application filed by the plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure for temporary injunction restraining defendant no. 1 from obstructing the possession of the plaintiff and defendants no. 2 to 10 over the suit property and from creating any third party interest in the suit property till the final disposal of the suit.

Brief facts of the plaintiffs case are as under -

2] Suit property consisting of two storeyed building constructed over the property bearing Grampanchayat Serial no. 177 and having Grampanchayat Property no. 135 admeasuring 1152 sq. ft. situated at Pimpalgaon (B), Tal. Niphad, Dist. Nashik is the ancestral property of the plaintiff and defendants no. 2 and 10. The suit property is purchased by deceased Ramchandra Narayan Zankar on 12/11/1956 and since then he was in possession of the suit property. Ramchandra Zankar demised on 22/11/1973. The plaintiff and defendants no. 2 to 6 are sons of deceased Ramchandra and defendants no. 7 to 10 are the children of deceased daughter of Ramchandra namely Satyabhama Dogmane.

3] In his lifetime deceased Ramchandra had given the suit property on rent to one Kashinath Hiralal Rathi. After the death of Kashinath, the suit property was given on rent to his son namely Jugalkishor Rathi. Said Jugalkishor Rathi was the tenant of deceased Ramchandra Zankar and now, he is in possession of the suit property as tenant of the plaintiff. Hence, defendant no. 1 is having no concern with the suit property. Due to his service, the plaintiff resides at Pune. In

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August 2017 he got knowledge that, defendant no. 1 is intending to mutate his name over the record of rights of the suit property. After inquiry he got knowledge that, defendant no. 1 purchased the suit property by way of sale deed dated 26/05/2017 by showing a bogus person as Ramchandra Zankar and also by preparing bogus Aadhar card in the name of Ramchandra Zankar. Defendant no. 1 got executed said bogus sale deed by putting thumb impression of said bogus Ramchandra Zankar. However at the time of sale deed, Ramchandra Zankar was no more and he used to put his sign on any document as he was literate. Ramchandra has never consented for said sale deed nor he received any consideration amount as mentioned in the sale deed. Hence said sale deed is void ab Initio and not binding on the share of the plaintiff and defendants no. 2 to 10. No right is conferred on defendant no. 1 vide said sale deed. On the basis of said sale deed, defendant no. 1 is trying to obstruct the possession of the plaintiff and defendants no. 2 to 10 over the suit property. Defendant no. 1 has also disconnected the electricity connection which was standing in the name of tenant Jugalkishor Rathi by giving an illegal application to the MSEDCL. Hence, there is apprehension that, defendant no. 1 will create third party interest in the suit property. This will cause great loss to the plaintiff and defendants no. 2 to 10 and they will be deprived off their legal right over the suit property. Therefore, the plaintiff constrained to present the suit alongwith this application.

4] Per contra, defendant no. 1 submitted his written statement and say below Exh. 23 and denied the contentions of the plaintiff in toto. It is submitted that, the original owner of the suit property Ramchandra

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Narayan Zankar decided to sell the suit property. The suit property is suitable for defendant no. 1 as at the same place on main road, his house bearing no. 161 is situated. Hence he decided to purchase the suit property. Accordingly, notice was published through Adv. R. R. Mundada in Dainik Gavkari on 10/02/2017. However no objection was received by the advocate and accordingly he issued the certificate on 25/05/2017. Hence on 26/05/2017 registered sale deed bearing no. 1000/2017 for consideration of Rs. 17,10,000/- was executed by Ramchandra Zankar in favour of defendant no. 1. Defendant no. 1 has paid the consideration amount by cheque. The possession of the suit property was handed over to defendant no. 1 on the same day of sale deed. Accordingly, the name of defendant no. 1 is also mutated to the record of the suit property in July 2017. The MSEDCL has also provided electricity connection in the name of defendant no. 1 for the suit property. Hence from the date of sale deed, defendant no. 1 is legally in possession over the suit property. Ramchandra Zankar died on 04/09/2017 i.e. after execution of said sale deed. Jugalkishor Rathi is not the tenant in the suit property. He used to reside in Balaji Nagar on Chinchkhed Road. He alongwith his two brothers Kamalkishor and Maheshkishor used to reside there in his four storeyed bungalow bearing Grampanchayat Property no. 6792/2018 and serial no. 11789. Hence, they prayed to reject the application.

5] Heard the learned advocate Shri. M. A. Pawar for the plaintiff and the learned advocate Shri. R. T. Chavan for defendant no. 1. Perused pleading and documents on record. Considering pleadings of parties, following points arise for my determination and I have recorded my findings thereon alongwith reasons as under -

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<b><u>Points</u></b>	<b><u>Findings</u></b>
1] Whether the plaintiff proves prima facie case in his favour ?	... . yes to the extent of alienation only.
2] Whether the balance of convenience lies in favour of the plaintiff ?	... . yes to the extent of alienation only.
3] Whether the plaintiff will suffer irreparable loss if temporary injunction is not granted in his favour ?	... . yes to the extent of alienation only.
4] What order ?	.... partly allowed.

**REASONS**

**AS TO POINTS NO.1 TO 3 :-**

6] Points no. 1 to 3 are interconnected with each other, therefore, in order to avoid repetition of facts and to avoid reproduction of evidence and reasonings, all three points are discussed together.

7] It is submitted on behalf of the plaintiff that, plaintiff's father Ramchandra Narayan Zankar purchased the suit property on 12/11/1956. He was retired from the Post of Assistant Education Officer. In his lifetime he has given the suit property on rent basis to Kashinath Hiralal Rathi. After the demise of Kashinath, the suit property was given to his son Jugalkishor Rathi on rent. The plaintiff mainly stood on the contention that, his father Ramchandra demised on 22/11/1973. Death certificate at Exh. 3/4 prima facie shows that, Ramchandra demised on 22/11/1973. The sale deed of the suit property at Exh. 3/5 shows that

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the same was executed on 26/05/2017 by the vendor Ramchandra Narayan Zankar in favour of vendee i.e. defendant no. 1. As per the contention of defendants, vendor Ramchandra demised on 04/09/2017. Contrarily the plaintiff has sent report to the Home Minister, Mumbai, S. P. Nashik Gramin and P. I. Pimpalgaon (B) Police Station that, defendant no. 1 got executed bogus sale deed by putting thumb impression of bogus Ramchandra Zankar. The plaintiff has also filed on record photocopies of complaints made by Lakhamichand Marwadi and Manojkumar Kewalram Mainani. In both these cases, allegations are made against defendant no. 1 that, without any sort of knowledge to the true owner fraudulently Gaurav Aakade i.e. defendant no. 1 has mutated his name over the properties of above said complainants.

8] The plaintiff submitted that he and defendants no. 2 to 10 are legal representatives of deceased Ramchandra. After demise of Ramchandra, the plaintiff and defendants no. 2 to 10 became owners of the suit property and through their tenant Jugalkishor Rathi they are in possession of the suit property.

9] Contrarily, the learned advocate for defendant no. 1 argued that the electricity bill of the suit property is in the name of defendant no. 1 and he is in possession of the suit property. For that purpose he placed reliance upon the Electricity bills of House no. 135 filed alongwith list at Exh. 41 wherein name of defendant no. 1 is mentioned. As per the contention of the learned advocate for the plaintiff said connection was in the name of Kashinath Rathi from the year 1996. In view of the application filed by tenant Jugalkishor Rathi, M. S. E. B has given letter

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that in the suit property Jugalkishor Rathi is in possession of the suit property bearing Grampanchayat House no. 135. Moreover tax receipts of suit property dated 07/03/1973, 19/03/1974 and 10/03/1975 are filed on record by the plaintiff which prima facie show that, Ramchandra has paid tax of the suit property through Kashinath Hiralal Rathi. Moreover the photocopy of sale deed dated 12/11/1956 is also filed on record by the plaintiff which prima facie shows that, the occupation of Ramchandra is shown as service. As per the contention of the plaintiff Ramchandra was not illiterate person.

10] To prove their respective possession both the parties have filed on record, affidavits of witnesses which are counter to each other. Therefore much importance to said affidavits is not warranted. As per the contention of the learned advocate of the plaintiff, he has proved his possession through his tenant Jugalkishor Rathi and affidavit of Jugalkishor Rathi also supports the contention of the plaintiff. In the present matter alleged tenant Jugalkishor Rathi is not a party to the suit. If on the basis of possession, the plaintiff is claiming temporary injunction to protect his possession, then prima facie he must have to prove his possession over the suit property. In the present matter admittedly the plaintiff and defendants no. 2 to 10 are not in actual possession of the suit property. It is well settled principle of law that to grant an injunction in favour of a person, possession must be proved to be with that person. Prima facie the plaintiff failed to prove his possession over the suit property. Thus he is not entitled to grant relief in that regard.

11] The plaintiff has also filed on record paper proclamation

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given by defendant no. 1 for mortgaging the suit property with Baswanteswar Gramin Bigarsheti Patsanstha dated 29/01/2018. This itself shows that, there is possibility of creating third party interest over the suit property. While granting the injunction, it has to be seen that, whether the plaintiff has a prima facie case. One has to consider that, prima facie case means a bonafide dispute requiring determination without prejudging the case. To prove prima facie case, the plaintiff has to show a reasonable chance of success. Documents filed on record show that, the plaintiff has established that, there is serious arguable question and it is not necessary that, the point to be proved to the hilt. At this stage showing a reasonable chance of success is enough to grant temporary injunction in regard to transfer or creating any third party interest over the suit property.

12] Considering all the strata on record, it appears that, the plaintiff proved his prima facie case. In such circumstances if injunction is not granted in favour of the plaintiff, then there is possibility that, defendant no. 1 would sell or alienate or create any third party interest over the suit property on the basis of sale deed dated 26/05/2017. Therefore, the plaintiff will suffer hardship and loss which could not be compensated in terms of money. Considering the cumulative factors i.e. prima facie case, balance of convenience and irreparable loss, I am inclined to answer points no. 1 to 3 in the affirmative in regard to the prayer of the plaintiff regarding not to alienate or create any third party interest over the suit property.

**AS TO POINT NO. 4 :-**

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13] In view of cumulative findings on points no. 1 to 3, I pass the following order as to point no. 4,

**ORDER**

- 1] Application (Exh.5) is partly allowed.
- 2] Defendant no. 1 or any other person on his behalf are hereby temporarily restrained from creating any third party interest over the suit property by way of sale and / or mortgage, donation, lease, loan, gift etc. till the final disposal of this suit.
- 3] Costs in cause.

Date : 04/04/2019

sdxxx  
(S. N. Hurgat )  
Joint Civil Judge Junior Division,  
Pimpalgaon (B)