

ORDER BELOW EXH.5 IN R.C.S.NO.68/2019.

The plaintiff has preferred present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, seeking the relief of interim injunction against the defendants for restraining them for alienating suit property, for obstructing possession of plaintiff and for mutating their names to the revenue record of the suit property.

2. It is contented that, the land bearing Gat No.97 ad-measuring 1 H 41 R out of total area ad-measuring 2 H 82 R situated within the limits of Pimpari Achala, Taluka Dindori, District Nashik is the suit property and it is most specifically described in para 1 of the plaint. It is contended that the suit property previously owned by Mr.Sahebrao Bapurao Patil. The plaintiff purchased suit property from him for the consideration of Rs. 3,60,000/- in the year 2009 and accordingly the mutation entry No.268 mutated. The plaintiff is owner and possessor of the suit property since its purchased. In the year 2015 due to financial need she borrowed loan of Rs. 10,00,000/- from defendant No.1. The reference of defendant No.1 has given to plaintiff by one Mahale. It was agreed between plaintiff and defendant no. 1 that for the security of said loan of Rs.10,00,000/- the execution of agreement (*Usanwar Dast*) is necessary. The plaintiff agreed to the same and she went in the office of registration for executing such agreement The defendant no.1 and 2 have taken her thumb impression on various documents and the photographs before the Sub-Registrar and executed such agreement.

3. Thereafter, the plaintiff has repaid the loan as per the agreed terms and conditions between them till 15/03/2017 and on the request of defendant No.1 the plaintiff pay alleged loan amount to defendant No.2 by way of two cheques of Rs.5,00,000/-. Then plaintiff requested to canceled alleged agreement at that time defendant Nos.1 and 2 convinced her that the agreement, (*Usanwar Dast*) became automatically canceled, as they received payment of loan from plaintiff.

4. On 20/6/2018 the plaintiff has received phone call from Talathi Office of Pimpri Achale, hence, she went there on 21/06/2018, she came to know that, defendant Nos.1 and 2 cheated her and executed illegal documents regarding the suit property. Plaintiff has acquired all documents regarding suit property at that time she came to know that defendant No.1 get executed agreement to sell bearing No.3137/2015 of the suit property and defendant No.2 get executed Special Power of Attorney bearing No.3138/2015 in his favour. They have also executed the final Sale Deed of the suit property bearing No.4399/2015 on the basis of Special Power of Attorney and Agreement to Sell. The plaintiff has not present at the time of execution of final Sale Deed. Hence, the said Sale Deed is not legal. The property was not handed over to defendant No.1 on the day of Agreement or on the day of Sale Deed, she is in possession of the suit property. All documents prepared by the defendants are illegal, bogus, without consideration and possession. The defendant No.1 is

trying to mutate his name to the revenue record of the suit property on the basis of those illegal documents. In that circumstances the plaintiff will suffer irreparable loss. She has made out prima facie case in her favour. Therefore, plaintiff is seeking relief of permanent injunction and declaration against defendants, hence, moved present application here with and praying for grant of application.

5. Called say of defendants. The defendant Nos.1 and 2 filed their say and written statement vide Exh.22 and thereby resisting the suit claim and application. It is contended that the plaintiff was in need of money for her household need and agricultural purposes and for purchasing new house. Hence, she wants to sale suit property. The defendant No.1 came to know about that. The talks between plaintiff and defendants taken place and accordingly the plaintiff was ready to sale suit property for the consideration of Rs.10,25,000/- in favour of the defendant No.1. Accordingly, on 27/08/2015 the plaintiff executed Agreement to Sell bearing No.3137/2015 dated 27/8/2015 by accepting earnest amount of Rs.10,00,000/- The defendant No.1 has paid that amount by way of cheques bearing No.100017 and 100018 of Abhyuday Co-operative Bank Ltd., Panchavati, Nashik. It was decided between them that, the remaining amount of Rs.25,000/- will be payable at the time of final sale deed. The plaintiff has handed over possession of the suit property on the day of Agreement to Sell.

6. The plaintiff has paid maximum amount on the day of Agreement to Sell and as the plaintiff was busy in their household

and farming work, she has given Power of Attorney in favour of defendant No.2 on 27/8/2015 and accordingly the document bearing No.3138/2015 was executed. Thereafter, on 23/12/2015 defendant No.1 has paid remaining amount of Rs. 25,000/- and accordingly plaintiff has executed final sale deed bearing No.4399/2015 through her Power of Attorney holder. Thereafter, the defendant No.1 went to Talathi Office for mutating his name to the revenue record of the suit property. He has brought record and then he came to know that, there is mortgage of Axis Bank and Kasabe Vani Co-operative Society on the suit property and without no objection certificate of these banks, the name of defendant no. 1 cannot be mutated. Accordingly, defendant No.1 asked plaintiff to repay such loan amount and to get no objection certificates from the banks, at that time, the plaintiff denied and stated that, as the suit property sold to defendant No.1 in the year 2015 it is responsibility of him to repay such loan amount. At that time the defendant no. 1 stated her that, he will take legal action against her, due to which the husband of plaintiff got angry and threatened defendant No.1 and file false case against defendant No.1 at Vani Police Station. The Plaintiff has filed this false suit and application on the basis of false contentions. Therefore, the defendants are praying for rejecting the application and for dismissal of the suit.

7. Heard both sides at length. Considering the rival pleadings of both parties and documents filed on record, following points arise for my determination, which are decided as follows :-

Sr.No	Points	Findings
1	Whether plaintiff has made out prima facie case in his favour ?	Yes.
2	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3	Whether irreparable loss would be caused to plaintiff, if injunction is not granted ?	Yes.
4	What order ?	As per final order.

REASONS

AS TO POINTS NO. 1 TO 3 :-

8. Points no.1 to 3 are interlinked with each other hence, I am deciding them altogether. Plaintiff came with case that, she is owner of the suit property. She was in need of money hence, she approached defendant no. 1 for loan, as one Mahale, resident of their village given the reference of defendant no.1. Thereafter plaintiff has taken loan of Rs. 10,00,000/- at the rate of 5% interest per annum and at that time, it was decided between them that, the agreement has to be executed for the security of such loan amount. The plaintiff accepted and accordingly signed the documents in the office of sub-registrar and her photos are also taken there. She has taken two cheques of Rs. 5,00,000/- each from defendants. At that time, she was under impression that, the alleged

agreement is of security agreement, but later on, when the plaintiff received phone-call from Talathi office and after taking copies of documents from Tahasildar office she came to know that, the defendant no. 1 and 2 cheated her. Defendant no.1 has executed Agreement to Sell and Sale Deed of suit property in his favour and defendant no. 2 executed Special Power of Attorney in his favour. Hence, defendants have played fraud upon her. Plaintiff has repaid loan amount to defendants till 15/03/2017. The possession of suit property is with plaintiff and there is mortgage of the banks over the suit property. Therefore documents executed by defendants are illegal and Bogus.

9. The plaintiff has relied upon document, 7/12 extract of the suit property, 6D entry No. 268, certified copy of Agreement to Sell and Special Power of Attorney dated 27/08/2015, Sale Deed dated 23/12/2015, copy of application No. 233/2018 vide list below Exh. 3. The copy of Charge-sheet of RCC 103/2019 vide list below exh. 31.

10. On the contrary defendants have contended that, the plaintiff was in need of money for their household need and agricultural purposes and for purchasing new flat. Hence, the defendant no. 1 has purchased suit property from the plaintiff by way of registered Agreement to Sell and Sale Deed. The plaintiff has executed such documents and she is signatory of those documents, hence, she cannot state that, those are executed by playing fraud upon her. The defendant no. 1 has paid consideration by way of cheques. In fact the plaintiff has given false document to defendants. The documents i.e. Agreement to Sell, Special Power of Attorney and Sale Deed are legal. The plaintiff filed this suit on the basis of false contentions. The defendants have relied upon document bank pass book of defendant no. 1 and 7/12 extract of suit property vide list below Exh. 30.

11. It is argued on behalf of plaintiff that, the defendants have

executed Agreement to Sell, Power of Attorney and Sale Deed by playing fraud upon her. She has repaid loan amount. Defendant no.2 is not relative of plaintiff, hence no question arise as to execute Power of Attorney in his favour. The document Agreement to Sell and Special Power of Attorney executed one after one, hence it shows malafied intention of defendants. 7/12 extract is still in the name of plaintiff. There is already loans of banks, hence, alleged Sale Deed is not legal. As per the Maharashtra Co-operative Societies Act section 48, the alleged sale transaction is not legal, as there is loan on suit property. In fact if the bank is giving loan of Rs. 31,00,000/- on such property then there is no question to sale suit property for the consideration of Rs. 10,00,000/-.

12. On the contrary Ld. Advocate for defendants argued that, plaintiff is educated person, she has executed sale deed previously, hence she knows what documents are executed at sub-registrar office. Therefore, there is no question of fraud. In fact, it is duty of the vendor/plaintiff to provide all documents, but she has provided false 7/12 extract of the suit property. The sale deed is executed, by considering government valuation and the government valuation was of Rs. 10,00,000/- at the time of alleged transactions. The defendant no. 2 has no concern to the present transaction, still he has made party to the suit, in fact he is acted on behalf of plaintiff. The proper court fee stamp is also not paid. The suit of plaintiff is also barred by limitation.

13. On perusal of record and hearing of both the parties, it appears that, it is admitted fact that, the suit property was owned by plaintiff and some documents are executed between them. The plaintiff alleged that, the defendants have executed Agreement to Sell, Power of Attorney and Sale Deed by playing fraud upon her, actually she was under impression that, the defendants have executed security agreement, as the transaction between plaintiffs and defendant no.1 was of loan

transaction. Therefore the alleged sale deed is not binding upon her. So far as allegations of plaintiff about fraud is concern, on perusal of Agreement to Sell and Power of Attorney, it appears that, those are executed on the same day and one after one. The plaintiff alleged that, the power of attorney holder is not her relative. The document Sale Deed is executed after few months of the Agreement to sell. Moreover, the thumb impression of plaintiff appeared on the sale deed, but her presence is not appears at the time of its execution. The plaintiff alleged that, she has filed criminal case against defendants and the copy of FIR, charge sheet of RCC No. 103/2019 is filed on record. Considering the documents it appears that, the plaintiff has taken necessary action against defendants for proving her allegations about such fraud.

14. The record further shows that, there is mortgage of banks over the suit property and the defendants have also admitted that, after the execution of documents they came to know that, there was encumbrances over suit property and they have also requested plaintiff to pay such loan, but she deny. It means that, the execution of documents taken place without any no objection of banks. If it is so, then alleged transaction is not legal as per section 48 (d) and (e) Maharashtra Co-operative Societies Act 1960.

15. The next thing is that, the Ld. Advocate for defendants brought my attention towards the document Agreement to Sell and Sale Deed and contended that, over the 7/12 extract of the suit property, in the other rights column there is bracket to the entries of mortgage loan, hence they believed that, the loans are repaid. I have perused 7/12 extract attached to Agreement to Sell and Sale Deed, it shows bracket to the loans of banks. But it also appears that, the same 7/12 extracts attached for Agreement to Sell and Sale Deed. If the defendants knows at the time of Agreement that, there was loan of banks over suit property, it

was his bounden duty to take search of the suit property. But, it is not contention of the defendants that, they have taken any search in that respect. Even at the time of execution of sale deed also they have not attached fresh 7/12 extract to verify about such encumbrances. Moreover, if it is contention of defendant that, the plaintiff has concealed the fact of encumbrances then why he has not taken action against plaintiff. Hence, it prima facie appears that, the defendant no. 1 is not bona-fide purchaser.

16. The most important thing is that, the defendants have alleged that, due to such encumbrances the name of defendant no. 1 is not mutated over the suit property, but the defendant no. 2 has filed 7/12 extract of the suit property in which the name of defendant no. 1 appears in the ownership column along with such encumbrances in other rights column. It also shows entry about injunction order of Civil Court Dindori. It means that the name of defendant No.1 mutated though there was ex-party injunction order against defendants and during the pendency of this suit, hence it is not effected. Moreover, the plaintiff has filed 7/12 extract of the year 2017-18 which shows name of the plaintiff in the ownership column and in the crop inspection column. Hence, it prima facie appears that, the plaintiff is in possession of the suit property. The possession of plaintiff needs to be protected.

17. I have gone through the allegations and counter allegations of both the parties. The plea raised by the plaintiff as to the fraud upon her and claiming ownership over the suit property required to be proved by adducing evidence or by obtaining admissions during cross examination. It can be done only at the time of trial. At this initial stage the documents filed by plaintiff goes to show that, there is something wrong and strange and the truth will come after hearing of the suit. Therefore documents filed on record are sufficient to prove the prima

facie case against defendants.

18. Considering all it appears that, the documents placed by plaintiff are sufficient to grant injunction against defendants. Moreover, if the defendants will succeed they definitely get interest in the suit property. The granting of injunction would not cause irreparable loss to defendants. Therefore considering the above discussion, the balance of convenience lies in favour of plaintiff. Therefore I answer point no.1 to 3 accordingly.

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

In view of above findings, the application is liable to be allowed and accordingly in answer to point no.4, I pass following order....

Order.

- 1) The application is allowed.
- 2) Defendant Nos. 1 and 2 are hereby temporarily restrained from dealing or transferring the suit property in any way and also restrained from altering any revenue record of the suit property and obstructing possession of the plaintiff over suit property, till disposal of suit.
- 3) Cost in cause.

Date :-20/6/2018

(Smt.G.S.Bora)
Jt.Civil Judge, J.D., Dindori.