

Order below Exh.5 in Regular Civil Suit No.44 of 2013

1] The plaintiffs have filed this application under Order XXXIX Rule 1 and 2 of Civil Procedure Code for grant of temporary injunction to restrain the defendants from alienating the suit property or creating third party interest in it till decision of the suit. The suit property is consisting of field bearing Gut no.455 admeasuring 6H 55R, having boundaries towards east- Gut No.429, 456, 458, towards west- Gut o.488, 403, 482, towards south- Gut no.459, 464, 463, 462, towards north- Gut no.433, situated at village Bhatgaon, Tal-Chadwad, Dist- Nashik. (*here-in-after referred as suit property for sake of convenience*).

2] It is the case of the plaintiffs that, the suit property was originally bearing survey no.141 and in the consolidation scheme it was given Gut no.460. Thereafter, the villages Bhatgaon and Wadi were divided and it was renumbered as Gut no.455. Originally the suit property was owned by father of plaintiff. He has executed a conditional sale-deed of 3 Acres area from the suit property for the consideration of Rs.2,000/- on 21/04/1970 in favour of Gopala Mandale. Accordingly, the mutation entry no.68 was effected, however, the area under the conditional sale-deed was mentioned as 3H instead of 3 Acres i.e. 1H 20R. In fact, 1H 20R area was given in possession of Gopala Mandale in pursuance of the conditional sale-deed. He had died on 19/05/1990 and the defendant nos.1 to 6 being his legal heirs have mutated their names in the said property by entry no.324. After the death of Gopala Mandale his wife Shewantabai have executed a redemption of sale-deed in favour of plaintiff no.2 on 07/05/1991 for the consideration of Rs.5,000/- for the area of 1H. Since then the name of defendant no.2 is appearing

in the crop inspection of the suit property. By taking advantage of the mutation entry in the name of defendants they have threatened the plaintiffs to alienate the suit property, therefore, they have prayed for temporary injunction to restrain them from alienating the same.

3] The defendant no.7 vide his written statement at Exh.35 admitted the claim of the plaintiffs. Similarly, the defendant nos.4 to 6 vide their say at Exh.50 also admitted their claim. The defendant nos.1 to 3 opposed the application by contending that the conditional sale-deed was executed by father of plaintiff no.1 in favour of Gopala Mandale in respect of 3H area of the suit property. Gopala Mandale was ready to execute the deed of redemption of the suit property in favour of father of plaintiff, however, he has never shown his willingness, therefore, they have become owner of the suit property. They have denied that Shewantabai has ever executed any document of redemption of the suit property in favour of plaintiff no.2. They are continuously cultivating the suit property. Therefore, they prayed for dismissal of the application.

4] Considering the rival pleadings of both the parties and documents produced in support of it following points arise for my determination to which, I record my findings thereon for the reasons to follow:

	<u>POINTS</u>		<u>FINDINGS</u>
1]	Whether plaintiffs are having prima facie case ?	..	In the Negative.
2]	Whether the balance of convenience lies in favour of plaintiffs ?	..	In the Negative.
3]	Whether the plaintiffs will suffer irreparable	..	In the

	loss, if injunction is not granted ?		Negative.
4]	What order ?	..	As per final order.

REASONS

5] I have heard learned counsel for plaintiffs Shri. G.V. Thakre and learned counsel for defendant nos.1 to 3 Shri. P.K. Patil.

6] In support of the application the plaintiffs have filed the copy of 7/12 extract of the suit property, copy of conditional sale-deed, copy of entry no.6D, mutation entry no.1605.

7] Before proceeding to discuss the facts of the present case it requires to be mentioned that grant of temporary injunction is a discretionary relief which discretion the Court is required to exercise by keeping in mind the principles of justice, equity and good conscious. To succeed in the application, the plaintiffs are required to show the existence of their legal right and consequent obligation upon the defendant to not to obstruct the enjoyment of that right of plaintiff. An obligation is defined as duty enforceable by law. Keeping these principles in mind I proceed to discuss the facts of the case.

As to point no.1

8] From the pleadings of the parties to the proceedings it is not seriously disputed on record that the father of plaintiff no.1 has executed a conditional sale-deed on 21/04/1970 in favour of Gopala Mandale i.e. predecessor in title of defendants for the consideration of Rs.2,000/-. However, the area of the suit property which is put to subject of conditional sale-deed is in dispute. Plaintiffs submitted

that he has only executed conditional sale-deed of 3 Acres area, however, the mutation entry was recorded in respect of 3H area. On the contrary, the defendant nos.1 to 3 have submitted that it was 3H area. The plaintiffs also submitted that wife of Gopala i.e. Shewantabai has executed a redemption of said property in favour of plaintiff no.2 on 07/05/1991 for the consideration of Rs.5,000/-. Plaintiff submitted that its area was mentioned as 1H. On the basis of these facts the plaintiffs are claiming injunction to restrain the defendants from further alienation of the suit property. A perusal of conditional sale-deed which is a type of mortgage goes to show that the area of the suit property mentioned in the said document is 3 Acres instead of 3H. The theory of plaintiffs that the redemption deed in respect of said property was executed in favour of defendant no.2 is not believable at least at this stage for more than one reasons. The area appearing in the redemption document is different than the original conditional sale-deed. Similarly, the consideration amount is also different. It is also not explained by the plaintiffs as to why the document of redemption was executed only in favour of plaintiff no.2 when both the plaintiffs are the legal heirs of Chabu Kandalkar. Therefore, it becomes easier to observe that the plaintiffs are suppressing material from the court. In such circumstances, equity jurisdiction cannot help the plaintiffs. Secondly, considering the prayer of plaintiffs in respect of alienation it must be stated that not a single document either in the form of agreement of sale, paper publication or notice of sale was produced on record by plaintiffs showing that the defendants nos.1 to 3 have put the suit property to the sale or any other alienation. At this stage it must be stated that the mortgage by conditional sale-deed dated 21/04/1970 is still in existence in the absence of valid redemption. It is settled position of law that once a mortgage is a always a mortgage and it remains so.

Therefore, the plaintiffs have failed to show prima-facie case in their favour. Hence, I answer point no.1 in negative.

As to point nos.2 & 3

9] The plaintiffs have failed to show that the defendants are trying to alienate the suit property. The mortgage by conditional sale-deed executed by father of plaintiff no.1 in favour of Gopala Mandale is still in existence though in respect of 3 Acres area of the suit property, therefore, the defendant nos.1 to 3 being his legal heirs are having substantial right in the said area of the suit property in the absence of redemption. Therefore, the balance of convenience do not lie in favour of plaintiffs. Similarly, in the absence of evidence in respect of alienation there is nothing on record to show that plaintiffs would suffer irreparable loss if injunction is refused. Hence, I answer point nos.2 and 3 in negative.

As to point no.4

10] For the reasons stated above, I proceed to pass following order :

ORDER

- 1) The application Exh.5 is rejected
- 2) Costs in cause.

Chandwad
Date : 30/09/2014.

[R.B. Giri]
Civil Judge Junior Division,
Chandwad, Dist-Nashik.