

MHNS190008642018.

Regular Civil Suit No.101/2018

ORDER BELOW EXH. - 14.

Present application filed on behalf of plaintiff under Order 39 Rule 1 and 2 of Civil Procedure Code.

Plaintiff's case in brief is as under:-

2. The present suit is for perpetual injunction and for executing re-convenience sale deed in favour of plaintiff. It is case of plaintiff that suit property Gat No.285 was originally owned by the father of plaintiff. In the year 1967, it was alienated by way of conditional sale for 3 years to the father of defendants i.e. Gangadhar Vaidya, wherein the consideration amount was Rs.550/-. It was for the period of 1967-70. However, after expiry of said period, father of plaintiff has repaid the amount agreed. But the father of defendant has not re-executed the sale deed. However, the possession of the said property is with present plaintiff. The amount supra was taken as hand-loan from the father of defendants. On 22.07.2018, the plaintiff has send notice by way of R.P.A.D. to defendant requesting to re-execute the sale deed in favour of plaintiff. However, they had not come soon. On the contrary, caused disturbance to the peaceful possession of plaintiffs over the suit property.

3. Initially, the plaintiff had filed application Exh.5. However, it was came to filed by the order of the court. The present application Exh.14. Moved on behalf of plaintiff seeking temporary, perpetual as well as mandatory injunction. It is submitted that during pendency of suit as well as

temporary injunction application Exh.5, as there is no impugned order, defendants on 05.08.2018, about 10-00 pm., forcefully entered into land of plaintiff (Suit property) and drove out them from the suit property. Defendants illegally taken possession of the suit property. In spite of repeated demand, they had not given possession of suit property. Plaintiff accordingly moved application for inserting prayer of mandatory injunction in the suit. It will take time to decide the suit. Therefore, requested for directing by way of temporary mandatory injunction to hand over the possession of the suit property to the plaintiff and restraining them from causing further obstruction to their peaceful possession over the suit property. The plaintiff is having *prima-facie* case and balance of convenience lies in their favour. If application is rejected, then plaintiffs will suffer from starvation as there is no alternative source of income. Therefore, requested to grant the application.

4. Defendant by filing say below Exh.16 resisted the application and denied the contents of application Exh.14 in toto. In addition to it, it is submitted that the defendants are owner and possessor of the suit property in view of sale deed bearing No.419 of 1967. By way of conditional sale deed supra, the father of plaintiff has sold out the suit land to the father of defendants. Accordingly, in view of said sale deed, the defendants in continuous possession of the suit property. The father of plaintiffs is fail to return the agreed amount to the father of defendant within stipulated period and in view of recitals in the sale deed, defendants become absolute owner of the suit property. Thus, defendants are having *prima-facie* case. Further, balance of convenience lies in their favour. In view of sale deed supra, the names of defendant's father was mutated to the 7/12 extract of suit property. After his demise, the name of present defendants were entered on the 7/12 extract. The defendants are in possession of the suit property since 1967. If

relief as claimed is granted, then definitely defendants will suffer irreparable loss. Thus, requested to reject the application.

5. After going through the material before court the following points arising for my determination and I have given findings by recording reasons thereon.

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiffs are having prima-facie case.?	No.
2.	Whether balance of convenience is lies in favour of the plaintiffs?	No.
3.	Whether plaintiffs will suffer irreparable loss if relief as claimed is not granted.?	No.
4.	What order.?	As per final order.

REASONS

AS TO POINT NOS. 1 to 3

6. Point Nos. 1 to 3 are connected with each other therefore, to avoid repetitive discussion, I took them together for discussion. It is not in dispute that the father of plaintiff executed conditional sale deed bearing No.419/1967. It is case of plaintiffs that though it was executed, the actual possession of the suit property lies with them. Further, their father had returned the agreed amount which was taken as hand-loan from the father of defendants. However, the father of defendants is failed to re-convey the suit property to the plaintiffs. After going through the recitals of the sale deed, it reveals that it was executed as a conditional sale for three years. Further, in its recital it is clearly mentioned that failure on the part of plaintiffs, to repay an

amount of Rs.550/- to the father of defendants, then it will be treated as absolute. It means it will be treated as out and out sale. After going through the property card of Gat No.85, it reveals that in view of sale deed the names of defendants mutated over the suit property and they were shown in the ownership and possession column. Further, recitals of sale deed in regard to possession shows that the possession was handed over to the father of defendants at the time of execution of sale deed.

7. The plaintiff by way of present application contended that their father has returned an amount of Rs.550/- within stipulated time as agreed. However, there is no any documentary evidence in support of their submission supra. The plaintiff by way of application Exh.14, contended that on 05.08.2018, defendants forcefully entered in the suit property and had taken possession of the suit property. However, there is no material to substantiate the said fact. On the contrary, the recitals of the sale deed, property card of the suit property Gat No.285 shows that the plaintiffs are in possession of the suit property. After taking into consideration aforesaid facts and documents, it *prima-facie* reveals that in view of the sale deed supra, the defendants are the owners and possessors of the suit property. Therefore, they are having *prima-facie* case and balances of convenience lies in their favour. If application is allowed, definitely, defendants are at prejudice. Thus, I answer point Nos.1 to 3 in negative.

AS TO POINT NO.4.

8. After considering the findings as to point Nos.1 to 3 the defendant is not entitled for relief of temporary injunction as prayed. Thus, I pass the following order-

ORDER

- 1] Application is rejected.
- 2] No order as to costs.

Date – 29/11/2021

(A. S. Kambale)
Civil Judge J.D. Yeola,
Dist. Nashik.