

**ORDER BELOW EXH.5**

Plaintiff filed this application under Sub-rule a of Rule (1) of Order XXXIX of the the Code of Civil Procedure, 1908. ( In short the C.P.C.) to refrain defendants from causing obstruction to the suit land i.e. a land admeasuring 22 R situated in Gat No.28 at village Bhardi, Tal.Nandgaon, Dist.Nashik. Four boundaries of the suit property are described in para 1 of the plaint.

2. Facts of the application are as under:

Plaintiff and defendant no.1 to 3 are real brothers. Defendant no.1 to 3 have executed a sale deed dtd.15.03.1995 in favor of plaintiff for value of Rs.20,000/-,which was registered before the office of Sub-registrar, Nandgaon, bears No.162/1995. On the same day possession has been handed over. Plaintiff contends, though there was a sale deed, defendant no.1 to 3 being real brothers, the document is titled as "A conditional sale deed". As per the terms, defendant no.1 to 3 should have to repay the amount mentioned in the said deed, within stipulated period of 3 years and re-purchase the suit land. However they failed to do so. Therefore sale became absolute and he became the owner of the suit land. Plaintiff further contends, he has improved a quality of suit land by expending almost Rs. 4 lacks. Defendant no.1 to 3 have no concern at all with the suit land. Despite, defendant no.1 has executed a sale deed in favour of defendant no.4.. He being the owner in possession of the suit land. Defendant no.1 has no right and title to transfer the suit land. Moreover defendant no.4 cannot get better right or title. Despite that on 20.06.2022 at about 07.00 am, when plaintiff was sowing seeds in the suit land, defendant no.1 and 4 caused obstruction to his possession over the suit land on the basis of false revenue entries. According to him defendants no.1 and 4 are trying to dispossess him unlawfully. Therefore he prayed to grant temporary injunction and restrain them from causing obstruction to his

possession over the suit land.

3. Defendant no.2 and 3 admitted the claim of plaintiff by filing joint pursis at Exh.15. Defendant no.1 and 4 resisted the claim of plaintiff by filing their say cum Written Statement at Exh.18. According to them the transaction dtd.15.03.1995 between the plaintiff and defendant no.1 to 3 is not a sale but “A mortgage by conditional sale”. As defendant no.1 to 3 were in need of Rs.20,000/,they took the amount of Rs.20,000/- from plaintiff and transfer the suit land for 3 years subject to reconvey on repayment of said amount within stipulated period. If they failed, plaintiff was bound to execute a sale deed by filing a suit or he should have to send notice for confirmation of sale. However he didn't and after period of 27 years, he approached before the court. Defendant no.1 and 4 contended, the suit land is ancestral property of plaintiff, defendant no.1 to 3, their sisters namely Vanubai Wadakte, Lahanu Mane and Sumanbai Bidgar. On 06.07.2018, plaintiff, defendant no.2, 3 and sisters executed a “Release deed” in favor of defendant no.1 and thereby relinquished their rights in the suit land. It was registered before the office of Sub-registrar, Nandgaon bearing No.2049/2018. As per said relinquished deed, defendant no.1 became the sole owner of the suit land. Accordingly as per M.E.No.780 names of plaintiff, defendant no.2,3 and all their sisters were deleted. Being the owner of suit land, defendant no.1 executed a registered sale deed dtd.09.09.2021, no.2997/2021 in favour of defendant no.4. The mutation entry no.910 was sanctioned to the effect. Thus defendant no.4 became the owner of the suit land. She is in possession and cultivating the suit land. Plaintiff has deliberately instituted present suit to grab the suit land. Accordingly they prayed to reject the application.

4. Heard Ld.Adv.Mr.Sonawne for plaintiff, Ld.Adv.Mr.More for defendant no.1 and 4. Perused the documents on record. Following are the points for determination along with my findings there on for reasons to follow :

Sr. No	Points	Findings
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1.	Whether plaintiff has a prima facie case ?	No
2.	Whether principle of balance of convenience lies in favour of plaintiff?	No
3.	Whether plaintiff would suffer irreparable loss if the application is rejected ?	No
4.	What order?	Application is rejected

### REASONS

5. Plaintiff has relied upon a certified copy of registered conditional sale deed dtd.15.03.1995 and 7/12 extract of the suit land. Per contra, defendant relied upon a registered Release deed dtd.06.07.2018, verified copy of M.E.No.683/2015 and 7/12 extracts of the suit land.

**As to point no. 1 to 4 :**

6. Before proceeding further, the relief of temporary injunction is equitable and discretionary relief. As per Order 39, Rule 1(c) the temporary injunction may be granted in case if defendant has threatened to dispossess the plaintiff or otherwise cause injury to plaintiff in relation to suit property. The court may grant such relief to restrained such act or make such order for the purpose of preventing the acts until the disposal of suit or till further order. In case of **Gujrat Bottling Co. Vs Coca-cola Co., AIR 1995 SC 2372**, the test for exercise of discretion in granting temporary injunction have been stated as (a) whether the plaintiff has prima facie case, (b) whether the balance of convenience lies in his favour and (c) whether the plaintiff will suffer an irreparable injury if his prayer for temporary injunction is disallowed. These rules are described has three pillars on which foundation of every order of injunction rests.

7. In order to claim discretionary relief of temporary injunction, these three conditions should be satisfied. Prima facie case should exist in favour of the plaintiff means the person who seeks aid of the Court by way of an injunction must satisfy the Court that there is a serious question to be tried in the suit and that on the facts before the Court there is a probability of his being

successful. Further the right exists in his favour and defendant has disturbed his right.

8. Ld.Adv.Sonavane for plaintiff submitted that on 15.03.1995, defendant no.1 to 3 executed a sale in respect of suit land in favour of plaintiff for value of Rs.20,000/-. However being the real brothers, instead of executing a sale deed, they executed a "Conditional sale deed" which is registered before the office of Sub-Registrar, Nandgaon bearing No.162/1995. On the same day possession has been delivered to plaintiff. Since then he is in possession of the suit land. Though the title of said document is "Conditional Sale" in fact it was a sale deed for consideration of Rs.20,000/-. As per the terms and condition, introduced in said deed, defendant no.1 to 3 should have to repay the amount of Rs.20,000/- within 3 years and re-purchase the suit land. However they failed and sale became the absolute. Accordingly plaintiff became the owner and possessor of the suit land. The possession has never been handed over back to defendants no.1 to 3. He further submits that defendant no.1 has sold out his share in the ancestral property i.e. suit land, defendant no.2 and 3 are also parties to the said transaction.

9. Per contra Ld.Adv.Mr.More for defendant no.1 and 4 submitted that defendant no.1 never executed a sale deed as contended by plaintiff. It was not a "Sale deed" but a "Mortgage by conditional sale deed" ("गहाणस्वरूपी शर्त खरेदीखत") Defendant no.1 to 3 were in need of Rs.20,000/- therefore they executed a mortgage by conditional sale deed subject to condition of re-conveyance within 3 years on payment of stated amount. If defendants would fail to repay within stipulated period then it is for plaintiff to send notice for confirmation of sale or to institute a suit for execution of sale deed. However plaintiff failed and after passing of 27 years he instituted a present suit. Ld.Adv. submitted that on 06.07.2018 plaintiff, defendant no.2, 3 and their sisters namely Venubai Vadakte, Lahanu Mane and Sumanbai Bidgar executed a "Release Deed" in favour of defendant no.1 and relinquished their rights in

the suit land. The said relinquished deed is registered before the office of Sub-Registrar, Nandgaon (No.2049/2018) M.E.No.780 was approved to that effect. As per the said Release Deed, defendant no.1 became absolute owner of the suit land and has right to enjoy, alienate or transfer the same as per his own wish. Accordingly he executed a registered sale deed dtd.09.09.2021 in favour of defendant no.4 (no.2997/2021). M.E.No.910 has been sanctioned accordingly. Thus defendant no.4 became owner and in possession of the suit land. Therefore relief of injunction if granted it would cause greater inconvenience and irreparable loss to her. Accordingly Ld. Adv. prayed to reject the application.

10. The execution of registered document dtd 15.03.1995 is not disputed by the parties though its nature is disputed. A deed dtd.15.03.1995 ( Exh.3/1) relied by the plaintiff, shows its title as "Mortgage by Conditional Sale deed" (गहाणस्वरूपी शर्त खरेदीखत). It is executed by defendant no.1 to 3 in favour of plaintiff. The recitals of said deeds are that defendant no.1 is the 'Karta' of Joint Hindu Family. He took Rs.20,000/- from plaintiff for the purpose of agricultural development and transferred the suit land (his share) for the period of 3 years. Till the expiry of stipulated period and till the re-purchasing, plaintiff is entitled to enjoy the suit land as its owner. If defendant no.1 to 3 avoided to repay and re-purchase the suit land, by considering the amount mentioned in said deed as a consideration and will execute a sale deed through court.

11. To establish prima facie possession parties have filed 7/12 extracts of the said land. On perusal of 7/12 extract (Exh.3/2) it appears name of the defendant no.4 is recorded for last M.E.No.910/2021. It is settled position that the mutation entries can not create any right or title but can be used for the fiscal purposes. However there is certain presumption provided u/s. 157 of the Maharashtra Land Revenue Code, 1966 that an entry in the record of rights, and a certified entry in the register of mutations shall be presumed to

be true until the contrary is proved or a new entry is lawfully substituted therefor. Plaintiff has not contended that he has challenged the mutation entry sanctioned after execution of release deed dtd.06.07.2018.

12. Ld.Adv. Sonawane argued that there is neither contention nor any document filed by defendant no.1 so as to believe that how the possession and ownership of plaintiff transferred back to defendant no.1. Once the person is put into possession by registered document, he can be dispossessed by the registered document only. As per registered document no.162/1995 plaintiff is put into possession and since then he is in possession. Admittedly contesting defendants haven't contended how the possession plaintiff get back to defendant no.1. He prayed to grant relief temporary injunction by restraining defendant no.1 and 4 from causing obstruction to plaintiff's possession over the suit land.

13. Plaintiff, defendant no.1 to 3 are the heirs of common ancestor. According to plaintiff defendant no.1 to 3 executed a sale deed in his favour. On the other hand defendant contended, plaintiff and other heirs relinquished the rights in the suit land and executed a registered release deed in his favour. Now both the documents are registered documents they have certain presumptory value. Plaintiff contends different intention behind execution of former document dtd.15.03.1995. According to him though the document was titled as conditional sale deed in fact, it is a sale deed. However the title of document is a "Mortgage by conditional sale deed". Whether the document dtd.15.03.1995 is covered under section 58(c) of the Transfer Property Act, sale deed or conditional sale deed would be determined by leading evidence. At this stage court can't draw any inference regarding the nature of document in question and it will be determined on merit.

14. So far as Subsequently executed "Release deed" dtd. 06.07.2018, to which plaintiff is one of the party (executant). Recitals of said deed are such that brothers( plaintiff, defendant no.2 and 3) got their respective shares in

the ancestral property therefore they relinquished all rights and interest in the suit land. Admittedly the document is silent regarding execution of document amongst plaintiff, defendant no.1,2 and 3. However plaintiff is one of the party to the Release Deed dtd.06.07.2018 which is subsequently executed and registered. It is the case of plaintiff that defendant no.1 has no concern with the suit land. Still he executed a registered sale deed dtd.09.09.2021 in favour of defendant no.4 and she is causing obstruction to his possession. He has relied upon affidavits of defendant no.2 and 3, filed at Exh.22/1/2 respectively. Wherein they affirmed that plaintiff is in possession of suit land since the year 1995. According to plaintiff he is in settled possession of the suit land since the year 1995 therefore defendants cannot disturb his possession without due course of law. Per contra, according to contesting defendants plaintiff is one of the party to 'Release Deed' dtd. 06.07.2018, who relinquished whatever interest in the suit land in favour of defendant no.1. All the heirs relinquished their rights and interest in the suit land in favour of defendant no.1. therefore he became the owner of suit land. Thus he had every right to transfer the same.

15. From the "Release deed" filed with Exh.20 shows that plaintiff, defendant no.2,3 and their sisters relinquished their rights in the suit land in favour of defendant no.1 before Sub-registrar, Nandgaon dtd.06.07.2018. Ld.Adv. submits, M.E.No.780 has been sanctioned and defendant no.1 became owner of suit land. Under his absolute rights and title, he executed a registered sale deed dtd.09.09.2021, for consideration, in favour of defendant no.4. Her name is recorded vide M.E.No.910/2021. On the same day possession has been handed over to defendant no.4. Therefore being the owner, she is in possession of suit land.

16. Neither parties disputed the execution of registered sale deed dtd.09.09.2021 by defendant no.1 in favour of defendant no.4. The 7/12 extract (Exh.3/2) shows that defendant no.4 is in possession of the suit land.

Plaintiff is silent regarding execution of relinquished deed dtd.06.07.2018. No probable explanation placed on behalf of plaintiff regarding subsequent document i.e. 'Release deed'. Last mutation entry no.910/2021 in respect of suit land prima facie shows possession of defendant no.4. Considering these aspects, I hold without touching to merits of suit, that plaintiff has failed to establish a prima facie case and eventually balance of convenience in his favour.

17. So far as irreparable loss to plaintiff is concerned, it is something moreover than ordinary loss which cannot be compensated in terms of damages. It is incumbent upon plaintiff to prove that he will suffer irreparable loss if injunction is denied. Plaintiff contends that if the relief of injunction will be refused he will suffer huge loss which can not be compensated. In case of **Seema Arshad Zaheer Vs. Municipal Corporation Grater Mumbai and Ors (2006) SCC 282**, it is observed that the court shall not grant a temporary injunction merely on the ground of sympathy or hardship. Thus in absence of prima facie case the injunction shall not be granted on the basis of sympathy that plaintiff will face inconvenience and would suffer irreparable loss. In view of above discussion, I answer point no.1 to 3 in negative and to answer point no.4, I pass the following order:

**ORDER**

Application at Exh.5 is hereby rejected.

Date : 03.08.2022  
Place: Manmad.

(S.A.Lomte)  
Civil Judge, J.D., Manmad.  
(City Court)  
J.O.Code-3147.