

ORDER BELOW EXH. 5

1. Plaintiff has filed this application seeking relief of Temporary Injunction against defendant nos. 1 to 3 thereby restraining them from causing obstruction or disturbance into the peaceful possession of plaintiff over suit land bearing gut no. 148 admeasuring 1H 42.89R land situated at village Yenegur Tal. Omerga. Plaintiff has appended her own affidavit below Exh. 6 in support of this application.

2. In short, plaintiff submits that defendant no. 1 is the wife of defendant no. 2, whereas defendant no. 3 is their son. It is alleged that mother of defendant no. 1 namely Shivkantabai Shivappa Gaikwad has expired. The plaintiff claims that she has purchased suit land admeasuring 2H 06R out of gut no. 148 from said Shivkantabai through a registered sale-deed no. 1983/2001 dt. 6.6.2001 for a valuable consideration of Rs. 4,55,001/-. However, for avoiding more stamp duty, lesser amount of consideration of Rs. 1,10,000/- was shown in the sale-deed. Prior to that sale-deed, one agreement was entered into between plaintiff, defendant no. 1 and Shivkantabai on 4.5.2011 on a stamp paper of Rs. 50/-. It is also alleged that on the day of said sale-deed, another agreement on stamp paper of Rs. 50/- was executed by defendant no. 1 and said Shivkantabai for the area of 0H 04R and separate consideration of Rs. 10,000/- was mentioned. On the basis of said sale-deed, mutation entry no. 567 has been passed in the name of plaintiff. The plaintiff has got N.A. permission and by preparing layout carved out plots and sold out some plots. After selling

some plots, now the plaintiff is in possession of the remaining portion of suit land as stated above. The defendants are creating obstruction in the peaceful possession of plaintiff. Hence this application is filed.

3. The defendant nos. 1 to 3 have submitted their written statement-cum-say below Exh. 18. Denying the contentions of plaintiff, it is contended by defendants that there was no sale agreement executed by defendant no. 1. The alleged agreement is bogus. Said Shivkantabai never signed or put her thumb impression over the agreement. The defendant no. 1 or said Shivkantabai has not executed any sale-deed. Defendant no. 1 and 3 have not signed over the sale-deed. The sale-deed is bogus one. Since the year 1995 said Shivkantabai was not able to walk without support. Shivkantabai was an uneducated lady. The agreement of 6.6.2001 is also bogus. The suit land is in possession of defendants as owners. In the last, defendants prayed to reject this application.

4. I have heard learned counsels of both the sides.

5. On the basis of pleadings, following issues arise for determination. I answer those issues alongwith my reasons as under :-

ISSUES

FINDINGS

1. Whether the plaintiff has made out prima facie case?

Yes.

2. Whether the balance of convenience lies in her favour?

Yes.

3. Whether the plaintiff would suffer irreparable loss if injunction as prayed is not granted? Yes.
4. What order ? Application is allowed.

REASONS

AS TO ISSUE NO. 1 to 3 :-

6. Plaintiff has produced on record original sale-deed bearing no. 1983 dt. 6.6.2001. Prima facie, it appears from this sale-deed that said Shivkantabai has sold out her land gut no. 148 to the extent of 2H 06R land for a consideration of Rs. 1,10,000/- in favour of plaintiff. It further shows that defendant no. 1 signed over this sale deed as a consenter and defendant no. 3 was one of the witnesses over it. The said sale-deed is a registered instrument and it has got legal presumptive value in the eye of law. So also plaintiff filed on record true copy of mutation entry no. 567 dt. 30.6.2001. Prima facie, it reveals that such mutation entry has been passed in the name of plaintiff on the basis of above sale-deed over the suit land. In addition to this plaintiff also produced on record true copy of 7/12 extract of suit land bearing gut no. 148. It is dated 25.1.2018. It shows that an area of 1H 42.89R land has been mutated in the name of plaintiff.

7. As against the title and possession of plaintiff over the suit land, defendants have failed to file any document showing their title or possession. There is no evidence of any illegal money lending business at

the hands of plaintiff. On the contrary plaintiff has filed copy of complaint dt. 1.6.2016 with the Police Station Murum. The defendants have filed two affidavits of witnesses to the effect that defendants are owners and possessors of the suit land. Needless to say, such affidavits of the witnesses filed by defendants are of no use at present. The registered sale-deed, mutation entry and 7/12 extract in favour of plaintiff overturn both the affidavits of the witnesses of defendants. I am of the considered view that denying title without any proof amounts to obstruction by defendants.

8. Therefore, documents filed by plaintiff do make a good prima facie in her favour. The plaintiff has got a case which needs to be inquired into in due course of trial. There is strong possibility that defendants may cause obstruction or disturbance to the plaintiff if this application is not allowed. Therefore more inconvenience is going to be caused to the plaintiff than defendants. If the possession is lost, plaintiff being woman would naturally suffer irreparable loss or injury to her interest. Even otherwise, for avoiding multiplicity of litigation between the parties, I am of the firm view that temporary injunction as claimed by plaintiff is the demand of justice. So I answer issue no. 1 to 3 in the affirmative.

AS TO ISSUE NO. 4 :-

9. The relief of injunction is a discretionary and equitable relief, which needs to be granted in view of settled principals of law. In the present case, I want to exercise my discretion in favour of plaintiff. Hence I answer issue no. 4 accordingly and pass following order.

ORDER

1. Application Exh.5 is hereby allowed.
2. Defendants are hereby temporarily restrained from obstructing or disturbing plaintiff for her peaceful possession over the suit land bearing gut no. 148 admeasuring 1H42.89R land situated at village Yenegur Tal. Omerga, pending hearing and final disposal of suit, otherwise than by due process of law.
3. Costs in main cause.

Date: 30/11/2019

Sd/-
(Md.Taher Bilal)
Joint Civil Judge Junior Division
Omerga.