

MHOS070023562022 	<u>Regular Civil Suit No.584/2022</u> <u>Ibrahim Mahmadsusen Shaikh</u> <u>Versus</u> <u>Zakiya Mahmadsusen Shaikh and</u> <u>others.</u> <u>CNR No.MHOS07-0023562022</u>
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ORDER BELOW EXHIBIT 29

The present application is filed by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 for the relief of temporary injunction restraining the defendants from disturbing the peaceful possession of the plaintiff over the suit property until the final disposal of the suit.

The brief facts of the present application are as follows-

2. The plaintiff and the defendant No.3 are the real brothers. The defendant No.1 is the step mother of the plaintiff and the defendant No.3. The defendant No.2 is the step brother of the plaintiff and the defendant No.3. The father of the plaintiff namely- Mahammad Hussain Kasimsaab Shaikh died on 03/01/2012. The first wife of the deceased namely-Saherabanu Shaikh was working as a Nurse in the health department. The suit properties are purchased by the father of the plaintiff in the name of the plaintiff and the defendant No.1 and 3. The consideration for the said transaction was given from the funds obtained from the benefits of the deceased Saherabanu Mehmadhussain Shaikh. The suit property was purchased by the father of the plaintiff on 26/12/1994 by registered deed No. 1889/1994 in the name of the plaintiff and the defendant No.3 under the guardianship of Aminabi Kasimsab Shaikh as they were minor at the time of purchasing the suit

property. However, when the plaintiff became major at that time, the suit property was entered in the common name of the plaintiff and the defendant No.3 on the 7/12 extract of the suit property. It is the further contention of the plaintiff that the suit property was given in the name of the defendant No. 1 only by way of nominal sale-deed. Hence, accordingly the stamp paper of Rs. 10 was executed between the plaintiff and the defendant No. 3. As per the said stamp paper, the defendant No.1 agreed to transfer the suit property to the plaintiff and the defendant No.3 when they become major. However, later on the defendant No.1 avoided to transfer the suit property to the plaintiff. Now it is the contention of the plaintiff that she is in possession of the suit property since last fifteen to twenty years. The defendants are creating an obstruction to the peaceful possession of the plaintiff. Hence, the plaintiff filed the present application against the defendants.

3. The defendant No.1 to 3 have filed their say to the present application below Exh. 27. In their say they have contended that the father of the plaintiff after the death of his first wife contracted a second marriage with the defendant No.1. The defendant No.1 was working in the health department in the year 1984. The defendant No.1 took care of the plaintiff, defendants and their other children. The suit property is purchased by the defendant No.1 out of her own income. At the time of purchasing the suit property, the defendant No.1 just gave birth to the defendant No.2 and hence at the time of registering the sale-deed she sent the elder daughter for the purpose of registering the sale-deed. Since 26/12/1994 the defendant No.1 is in possession of the suit property. The plaintiff has no concern with the said suit property. The defendant No.1 has not signed on the stamp paper. The date is also not mentioned on the stamp paper. Further the number of the property is also not mentioned in the stamp paper. The plaintiff has prepared a false

stamp paper. Hence, prayed for the rejection of the application.

4. Perused the application and the say filed thereon.

5. Heard the Learned Advocate for the plaintiff and the Learned Advocate for the defendants.

6. Considering the averments of the plaintiff and the defendants as well as the documents filed on record and upon hearing arguments of the learned Advocate of the plaintiff and the defendants, the following points arise for my determination and I have recorded my findings against each of them for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiff proves that he has prima-facie case in his favour ?	.. In the Negative.
2	Whether the plaintiff proves that the balance of convenience also lies in his favour ?	.. In the Negative.
3	Whether the plaintiff proves that an irreparable loss will be caused to his if an order of injunction is refused ?	.. In the Negative.
4	What order ?	.. As per final order.

REASONS

As To Point No. 1 to 3-

7. The point No. 1 to 3 are interlinked with each other hence in order to avoid the repetition I am discussing them together.

8. In the instant case it is the contention of the plaintiff that he is in possession of the suit property. On the contrary, it is the contention of the defendants that the defendant No.1 is in possession of the suit

property. The plaintiff has filed on record two sale deeds of Gat No.1240. On the perusal of the first sale deed executed between the plaintiff, the defendant No.3 and Mallinath Malge dated 26/12/1994 bearing document No. 1889/1994 it appears that the property out of Gat No. 1240 ad-measuring 2 H. 42 R situated on the western side is purchased by the defendant No.3 and the plaintiff. On the perusal of the second sale deed executed between the defendant No.1 and Mallinath Malge out of gat No. 1240 the property ad-measuring 1 H. 62 R situated on the eastern side is purchased by them. On the perusal of both the sale-deeds it appears that even though both the properties are out of Gat No. 1240 but they are differently situated. The suit property in the instant suit ad-measuring 1 H. 64 R. which on the perusal of the second sale deed appears that is standing in the name of the defendant No.1. It is the further contention of the plaintiff that in the stamp paper the defendant No.1 has admitted to give the suit property to the plaintiff and the defendant No.3 when they become major. However, on the perusal of the stamp paper it appears that nowhere the number of the suit property is mentioned. Hence the stamp paper prima facie appears to be vague. Further the 7/12 extract is also in respect of the area ad-measuring 2 H. 40 R. Hence the 7/12 extract filed by the plaintiff also cannot be relied upon. From the documentary evidence prima facie it appears that the defendant No.1 is the owner and possessor of the suit property. The documentary evidence tilts in favour of the defendant No.1. Hence, the plaintiff has failed to prove his prima facie case. The balance of convenience lies in favour of the defendants. Further, if the present application is rejected no irreparable loss will be caused to the plaintiff. Hence, I answer point No. 1 to 3 in the Negative.

As To Point No.4-

9. As I have answered the point No.1 to 3 in the negative hence in answer to point No.4 I proceed to pass the following order-

O R D E R

1] The application is rejected.

2] Costs in main cause.

Date:- 29-01-2024

Sd/-
(Smt. M.P. Mathure)
Judicial Magistrate,First Class,
Court No.3, Omerga.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer	---	S. B. Sagar
Court	---	3 Rd Jt.C.J.J.D. & J.M.F.C., Omerga.
Date	---	29-01-2024
Order signed by the Presiding Officer on	---	29-01-2024
Order uploaded on	---	29-01-2024