

ORDER BELOW EXH.5
CNR NO.MHPU100000942021

1 R.C.S. 14/2021
Pandurang Dattatrya Nangare
-Vs.-
Pimpri Chinchwad Municipal Corporation



ORDER BELOW EXH.5
(Passed on 15/04/2023)

1. The present application is filed for seeking interim relief of injunction. The suit is filed for seeking perpetual injunction and declaration against the defendants. In the present application, it is prayed that the defendant should be restrained from issuing property tax bill in the name of tenant Mr. Ganeshram Kanaram Choudhary in respect of the suit property Sector No. 25 A, 5/6 situated at Nigdi Pradhikaran.

2. **Brief facts of the plaintiff's case are as under:**

The suit property is Sector No. 25 A, 5/6 situated at Nigdi Pradhikaran. It is owned by the Plaintiff Mr. Pandurang Dattatray Nangare. It is alleged by the plaintiff that the defendant i.e. Pimpri Chinchwad Municipal Corporation illegally entered name of plaintiff's tenant Mr. Ganeshram Kanaram Choudhary as possessor in their record of the suit property. No notice was served by the defendant to the plaintiff before this entry. Hence, the plaintiff is deprived of his legal rights. It is also alleged that the R.C.S. No. 149/2009 which was filed by the present plaintiff in the

Hon'ble Small Cause Court, Pune was dismissed due to the above-mentioned entry that was taken by the defendant. Plaintiff is confident that merit in this suit would make him succeed. Hence, it is prayed by the plaintiff that the defendant should be restrained from issuing property tax bill in the name of tenant Mr. Ganeshram Kanaram Choudhary.

3. There is only one defendant and that is the Pimpri Chinchwad Municipal Corporation. Their say and written statement is filed at Exh. 13. It is contended on their behalf that tax assessment of the plaintiff's property was carried out by the defendant as per the provisions of the Maharashtra Municipal Corporation Act in the year 1988. The plaintiff constructed extra structure on the suit property. Hence, notice was attempted to be served on the plaintiff on 29/05/1999. But, as per their record, one Smt. Pavandevi Choudhary was present on the suit property and she refused to receive the notice. Further, Mr. Ganesh Kanaram Choudhary presented an application dtd. 20/07/2011 to the defendant for transfer of the suit property. He also submitted Power of Attorney dtd. 6/02/1990 and 9/04/1990, agreement dtd. 17/12/1990,

Telephone Bill and copy of Rationing Card. Then, the public notice was issued and served on Mr. Chunilal Choudhary on the spot and one copy of the said notice was also attached on the Notice Board of Nigdi Pradhikaran for transfer of the suit property. But, no objection was received. Hence, Transfer Order was passed on 9/08/2011 and the name of plaintiff Mr. P. D. Nangare was entered as the owner and name of Mr. Ganesh Kanaram Choudhary as the possessor of the suit property. Hence, claim of the plaintiff is false and they prayed for rejection of the application.

4. Perused application, say and documents on record. Heard detailed argument of both sides. From the above peculiar facts and circumstances of the case, following points arise for my determination and my findings thereon with reasons are as under:

<u>Sr.</u> <u>No.</u>	<u>Points for Determination</u>	<u>Findings</u>
1.	Whether plaintiff has proved <i>prima facie</i> case?	No.
2.	Whether balance of convenience lies in favor of plaintiff?	No.

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3. Whether irreparable loss will be caused to the plaintiff, if temporary injunction is refused?

No.

4. What order?

Application is rejected.

REASONS

AS TO POINTS NO.1 TO 4 :

5. Perused the written notes of the argument of the plaintiff at Exh. 16 and that of the defendant at Exh. 15. It is argued on behalf of the plaintiffs that the defendant i.e. Pimpri Chinchwad Municipal Corporation illegally entered name of plaintiff's tenant Mr. Ganeshram Kanaram Choudhary as possessor in their record of the suit property. No notice was served by the defendant to the plaintiff before taking this entry. Hence, the plaintiff is deprived of his legal rights. It is also alleged that the R.C.S. No. 149/2009 which was filed by the present plaintiff in the Hon'ble Small Cause Court, Pune was dismissed due to the above-mentioned entry that was taken by the defendant. Plaintiff is confident that merit in this suit would make him succeed in the suit. Hence, it is prayed by the

plaintiff that the defendant should be restrained from issuing property tax bill in the name of tenant Mr. Ganeshram Kanaram Choudhary.

6. It is argued on behalf of the defendant that tax assessment of the plaintiff's property was carried out by the defendant as per the provisions of the Maharashtra Municipal Corporation Act in the year 1988. The plaintiff constructed extra structure on the suit property. Hence, notice was attempted to be served on the plaintiff on 29/05/1999. But, as per their record, one Smt. Pavandevi Choudhary was present on the suit property and she refused to receive the notice. Further, Mr. Ganesh Kanaram Choudhary presented an application dtd. 20/07/2011 to the defendant for transfer of the suit property. He also submitted Power of Attorney dtd. 6/02/1990 and 9/04/1990, agreement dtd. 17/12/1990, Telephone Bill and copy of Rationing Card. Then, the public notice was issued and served on Mr. Chunilal Choudhary on the spot and one copy of the said notice was also attached on the Notice Board of Nigdi Pradhikaran for transfer of the suit property. But, no objection was received. Hence, Transfer Order was passed

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on 9/08/2011 and the name of plaintiff Mr. P. D. Nangare was entered as the owner and name of Mr. Ganesh Kanaram Choudhary as the possessor of the suit property. Hence, claim of the plaintiff is false and they prayed for rejection of the application.

7. On perusal of the documents on record, it transpired that copy of the complaint dtd. 7/02/2020 forwarded to the Commissioner of P.C.M.C. is filed on record. Copy of the circular issued by the Commissioner dtd. 5/10/2019 in respect of transfer of property on the basis of Power of Attorney is also filed on record. Number of other documents have been filed on record. However, the main lacuna in this matter is it has not come on record as to why the plaintiff did not take any objection in respect of the transfer of the suit property despite its publication on the Notice Board of Nigdi Pradhikaran. Secondly, the plaintiff has claimed final relief in the present application. The prayer is - "the defendant should be restrained from issuing property tax bill in the name of tenant Mr. Ganeshram Kanaram Choudhary in respect of the suit property Sector No. 25 A, 5/6 situated at Nigdi Pradhikaran." This relief is in the nature of perpetual injunction which cannot be granted at this

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stage of the proceeding. In such circumstances, it cannot be said that the plaintiff has proved *prima facie* case, balance of convenience lies in his favor and he will suffer irreparable loss if the temporary injunction is not issued in his favor. Hence, I answer the points No. 1 to 3 in negative. And, I proceed to pass the following order in answer to the point no. 4:

ORDER

The application is rejected.

Dated: 15/04/2023.

(S. P. Kulkarni)
Civil Judge Junior Division
P.C.M.C. Court, Akurdi, Pune.

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CERTIFICATE

“I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Stenographer :- B. C. Karnikar (Grade III)

Court Name :- Smt. S. P. Kulkarni
(J.M.F.C.) Civil and Criminal
Court (P.C.M.C.), Akurdi, Pune.

Date :- 15/04/2023

Judgment signed by
presiding officer on :- 15/04/2023

Judgment uploaded on :- 15/04/2023