

ORDER BELOW EXH-5 in R.C.S
No.133/2015

This is an application filed by applicant/plaintiff for grant of temporary injunction under Order-39 Rule-1, 2 of Code of Civil Procedure.

[2] Applicant/plaintiff submitted that OH-21R in Gat No.469 of village Bhongawali Tq.Bhor Distt.Pune is subject matter of the suit. Defendants are owners of the suit property and they have joint family. Out of family necessities, deft.no.1 has executed registered agreement to sell in favour of plaintiff. Deft.no.1 to 4 obstruct the plaintiff to cultivate the suit field, therefore, they have been added as defendants. Defendants are trying to grab and sell the suit property.

[3] Plaintiff further submitted that he has developed the suit property and spent Rs.1,20,000/- for pipeline and other things. Plaintiff has taken pipeline for his Gat No.453 and made it irrigated. Now defendants are not obtaining permission necessary for inaam varg 6(b) land and executing sale-deed. Therefore, plaintiff is constrained to file instant suit. Defendants have taken Rs.7,000/- from plaintiff for compliance of permission from Collector. But they are avoiding to execute the sale-deed as per the agreement. On the contrary, they are showing suit property to customers for selling it. Defendants threatened the plaintiff to file case of atrocity against him. On 09/07/2015, defendant no.1 and 3 threatened plaintiff to sell the suit property when he was cultivating it. Deft.no.2 to 4 also threatened him. Defendants had filed false complaint

before Kikvi Outpost against plaintiff. On 23/04/2015, defendants sent false notice to plaintiff and they admitted about acceptance of money and some agreement therein. As per agreement to sell, plaintiff is in possession of suit property. Defendants have no concern with it. Plaintiff has never given back possession of suit property to defendants. Defendants have taken Rs.2,000/-from plaintiff on 27/11/2014 for permission. On 26/02/2015, plaintiff did not give amount to defendants, therefore, being annoyed, they gave false complaint to police. Thereafter defendants sent notice through Advocate Shri. Dhadve in order to harass plaintiff. Plaintiff replied it on 18/06/2015.

[4] Plaintiff further submitted that the price of suit property was fixed between plaintiff and defendants as Rs.16,000/- and accordingly sale-deed was to be executed. Defendants have accepted Rs.15,900/- and executed registered agreement to sell (tabesathekhat) on 24/09/2001 in favour of plaintiff. Since then, plaintiff is in possession of suit property and he takes crops therefrom. Suit property is mahar vatan innaam varg 6(b) land, therefore, prior permission of Collector is necessary for it.

[5] Plaintiff further submitted that on 28/02/2015, deft.no.1 & 3 asked plaintiff to cancel the above transaction but plaintiff denied it. Therefore son of defendant threatened plaintiff. Defendants are obstructing the possession of plaintiff with malafide intention. Name of defendant is on 7x12 extract, therefore, taking advantage of this, defendant is trying to alienate suit property to third person and evict the plaintiff. Therefore it is necessary to grant injunction against defendants. Out of the greed, there is possibility that defendants will alienate suit

property in favour of third persons. On 09/07/2015, deft.no.1 and 2 called plaintiff and told so. Defendants are harassing plaintiff therefore plaintiff has filed instant application. Plaintiff has prima-facie case in his favour. Suit will take time to be decided on merits. If TI is granted, defendants are not going to suffer any loss. Balance of convenience also lies in favour of plaintiff. Hence application may kindly be allowed.

[6] On being served, deft.no.1 and 3 resisted the application by filing say at Exh-20 and contended therein that suit is false. They further contended that plaintiff is resident of village Nhavi and defendants are resident of Bhongawali Tq.Bhor. Properties of plaintiff, defendants and Katkar are adjacent to Bhongawali and Nhavi. The family of defendants belongs to backward class and they are very poor. Defendants used to go to plaintiff for labour work in field. Therefore good relations were developed between them. Defendant was in need of money, therefore, he had demanded Rs.16,000/- from plaintiff. At that time, plaintiff got executed one document on 24/09/2001 from deft.no.1 and gave Rs.15,900/- and did not supply copy of it to defendant. After 3 years, when defendant went to re-pay the amount to plaintiff, he did not accept it. In between plaintiff started obstructing the possession of defendants over suit property. Therefore defendants had filed complaint at Kikvi police station against plaintiff. At that time, plaintiff gave copy of agreement to sell to defendant. The transaction between plaintiff and defendant was of mortgage. Defendant was ready to repay the amount, but, plaintiff refused to take it. Therefore defendants sent notice to plaintiff through Advocate Dhadve on 23/04/2015. But plaintiff sent false reply through Advocate Gogawale on 18/06/2014 and plaintiff has filed false suit.

[7] Defendants further contended that the transaction between plaintiff and defendant was of the nature of loan and it was not sale-purchase transaction. If it were sale purchase transaction, plaintiff would have tried to bring permission for it, plaintiff from time to time would have told defendant to bring permission or would have sent notices to defendants for bringing permission. But as the transaction was of loan, plaintiff did not try for permission of sale-purchase. Plaintiff was knowing that suit property is mahar vatan inam land and sale-deed of it is not possible without permission. Now prices of land have increased, therefore, after 15 years, plaintiff has filed false suit against defendants. Plaintiff has not given notice before filing of suit.

[8] Defendants further contended that suit property is their ancestral property. Though name of defendant no.1 is on 7/12 extract of property but he is not the only owner of suit property. Defendants no.2 to 4 also have ownership and possession in suit property. Therefore defendant no1 had no right to sell suit property. Defendant is having small field and belongs to mahar caste and suit property is mahar vatan inam land. If above property is sold, it will be difficult for defendant no.1 to 4 to live on their property. Defendant no.1 is ready to return loan amount Rs.15,900/- to plaintiff even on today. Defendants are in possession of suit property and they take crops therefrom every year. This year defendants have cultivated soyabean. Plaintiff has damaged this crop. If T.I is granted, defendants will suffer irreparable loss.

[9] Defendants further contended that plaintiff belongs to rich family and he has man and money power behind him. Plaintiff had

abused defendants on caste. Defendant had given complaint in that regard to Kikwi outpost but plaintiff did not let the case filed against him. Plaintiff has political influence and he is arrogant person. Therefore plaintiff is putting pressure on defendants. Therefore it has become difficult for defendants to cultivate the field peacefully. Plaintiff is trying to evict the defendant by abusing procedure of the Court. Therefore reliefs sought by plaintiff should be rejected. If T.I is not granted, plaintiff is not going to suffer any loss. Hence application may be rejected.

[10] From record, it appears that deft.no.2 and 4 have adopted the say of above defendants.

[11] In view of the pleadings of plaintiff and defendants, following points arise for my determination. I have recorded my findings thereon along-with reasons as under :-

Sr. No.	Points :	Findings :
1	<i>Does plaintiff prove that he has prima facie case in his favour ?</i>	<i>In the affirmative.</i>
2	<i>Does plaintiff prove that balance of convenience lies in his favour ?</i>	<i>In the affirmative.</i>
3	<i>Does plaintiff prove that if T.I is not granted, he will suffer irreparable loss or injury ?</i>	<i>In the affirmative.</i>
4	<i>What order ?</i>	<i>As per final order.</i>

REASONS
As to points no.1 to 4 :

[12] Heard Counsels of both sides. Perused the record carefully. It is a suit for specific performance of contract and permanent injunction. In support of his case, plaintiff has filed certain documents on record i.e. 7x12 extract of Gat No.469 of village Bhongawali, notice dated 23/04/2015 of defendant to plaintiff, notice dtd 28/04/2015 by plaintiff to defendant, acknowledgment, notice dated 18/06/2015 by plaintiff to deft.no.1, letter of Revenue inspector dated 09/04/2004 to defendant, copy of registered agreement to sell dated 24/09/2001, complaint to Police Station Nasrapur by plaintiff dtd. 12/10/2015, letter of police station to plaintiff etc. On the other hand, defendants filed certain documents on record i.e. 7x12 extract of Gat No.469, receipt dtd. 03/05/2015, receipt of labour work dtd. 01/07/2015, affidavits of Santosh and Anil etc.

[13] It is pertinent to note that 7x12 extract of Gat No.469 of village Bhangawali shows name of deft.no.1 only. The agreement to sell (tabesathekhat) between plaintiff and deft.no.1 is a registered document. It clearly shows that sale-deed was to be executed within 6 months from the date of permission from concerned officer. It appears that defendant no.1 did not bring permission for executing sale-deed. It appears from agreement to sell that on the same date, possession was given to plaintiff. Therefore it appears that plaintiff is in possession of suit property. I have also gone through the documents filed by defendants. But in view of the registered agreement to sell, it clearly appears that plaintiff has a triable case and he has made out a case for grant of temporary injunction against

defendants. Whether plaintiff is entitled for the reliefs as prayed by him or not will be decided at time of full-fledged trial. Hence I proceed to pass following order -

ORDER

- [1] Application is allowed.*
- [2] Defendants or anybody on their behalf are hereby restrained from obstructing the possession of plaintiff over suit property or alienating it till decision of the suit.*
- [3] No order as to cost.*
- [4] Application is disposed-off accordingly.*

Date/-31/12/2015.

*(A. M. Husain)
Civil Judge Junior Division
Tq.Bhor,Distt.Pune*

Note:- I affirm that contents of this P. D. F. file judgment are same words as per original judgment.

*Name of the Court : C.J.J.D Bhor, Distt. Pune
(Shri. A. M. Husain)*

Name of Stenographer : R. I. Sayyed.

Date of P. D. F. : 13/01/2016.